Before the
Federal Communications Commission
Washington, DC 20554

VERIZON PENNSYLVANIA LLC and VERIZON NORTH LLC, Complainants, v. METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, and PENN POWER COMPANY, Defendants.	Proceeding No. 19-___ Bureau ID No. EB-19-MD-___

POLE ATTACHMENT COMPLAINT

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I. SUMMARY

The Pole Attachment Act entitles Verizon to just and reasonable pole attachment rates.[1] The Act also prohibits FirstEnergy[2] from charging Verizon rates that exceed the rate it charges Verizon's competitors, a rate known as the "new telecom rate."[3] But FirstEnergy collects rates from Verizon that are more than [redacted] the new telecom rate, and FirstEnergy refuses to voluntarily reduce those rates to the new telecom level. FirstEnergy's conduct violates the Pole Attachment Act, 47 U.S.C. § 224(b), and the Commission's implementing regulations and orders, including the 2011 *Pole Attachment Order* and 2018 *Third Report and Order*.[4] The Commission should order FirstEnergy to refund the over [redacted] FirstEnergy has collected in violation of federal law since 2011 and set Verizon's rate at the just and reasonable new telecom level.

Verizon and FirstEnergy jointly use more than 412,000 utility poles in Pennsylvania under terms and conditions of ten substantially similar joint use agreements dating back as far as 1958. Verizon pays FirstEnergy annual pole attachment rent under amendments to those

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[1] 47 U.S.C. § 224; *see also Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5331 (¶ 209) (2011) ("*Pole Attachment Order*"), *aff'd*, *Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013), *cert. denied*, 571 U.S. 940 (2013).

[2] In this Complaint, "FirstEnergy" refers collectively to the three defendants, Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), and Penn Power Company ("Penn Power"), that are FirstEnergy operating companies in Pennsylvania. Verizon's affiliate is filing a related Complaint today against FirstEnergy's Maryland affiliate, The Potomac Edison Company ("Potomac Edison"). The Complaints have factual overlap because the parties' pre-complaint negotiations included all four FirstEnergy companies.

[3] *See In the Matter of Accelerating Wireline Broadband Deployment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, 7767-71 (¶¶ 123-29) (2018) ("*Third Report and Order*"); *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 217).

[4] *Third Report and Order*, 33 FCC Rcd 7705; *Pole Attachment Order*, 26 FCC Rcd 5240; *see also* 47 C.F.R. §§ 1.1401, 1.1413.

agreements, which took effect between 1999 and 2009 when FirstEnergy owned about three-quarters of the jointly used poles. FirstEnergy retains this three-to-one pole ownership advantage today and has used it to preserve unlawful, unreasonably high contract rates for years after the Commission directed FirstEnergy and other electric utilities to eliminate the "widely disparate pole rental rates [that] distort infrastructure investment decisions and in turn could negatively affect the availability of advanced services and broadband."[5]

Since early 2012, Verizon has asked FirstEnergy for just and reasonable rental rates, focusing first on the rates Met-Ed imposed and later expanding the discussions to include Penelec, Penn Power, and Maryland affiliate Potomac Edison. Throughout, FirstEnergy has deployed stalling tactics and offered evolving—but consistently meritless—explanations in a coordinated effort to maintain its excessive pole rent income stream. FirstEnergy first asserted Verizon was not eligible for rate relief for joint use agreements that pre-date the Commission's 2011 *Pole Attachment Order*—a position at odds with Commission precedent and "the supremacy of federal law over contracts."[6] Later, FirstEnergy stated Verizon should pay more than [redacted] the rate its competitors pay because Verizon enjoys "competitive advantages," the alleged value of which it never quantified and which are not advantages at all. And now, a full year after the Commission issued its 2018 *Third Report and Order* establishing a presumption that Verizon and other ILECs should be charged no higher than the new telecom rate, FirstEnergy has still refused a material reduction to Verizon's rates in Pennsylvania (or Maryland).

[5] *Pole Attachment Order*, 26 FCC Rcd at 5243 (¶ 6).

[6] *Third Report and Order*, 33 FCC Rcd at 7731 (¶ 50) (citation omitted).

The Commission should reject FirstEnergy's longstanding and coordinated effort to evade its legal obligations. It should grant Verizon's complaint, require FirstEnergy to charge Verizon the just and reasonable new telecom rate, and order FirstEnergy to refund the amounts taken in violation of law during the statute of limitations that applies in Pennsylvania. By doing so, the Commission will send a needed message to the industry that the Commission will enforce its 2011 and 2018 Orders and will not countenance tactics that increase broadband deployment costs by denying providers their statutory right to a just, reasonable, and competitively neutral pole attachment rate.

II. PARTIES AND JURISDICTION

1. Complainants Verizon Pennsylvania LLC and Verizon North LLC (collectively, "Verizon") are incumbent local exchange carriers ("ILECs") that provide telecommunications and other services in areas of Pennsylvania. They are Delaware limited liability companies with a principal place of business at 900 Race Street, Philadelphia, PA 19107. Verizon may be reached through counsel at (202) 515-2179.

2. Defendants are three operating subsidiaries of FirstEnergy Corporation, "one of the nation's largest investor-owned electric systems."[7] Defendants Metropolitan Edison Company ("Met-Ed") and Pennsylvania Electric Company ("Penelec") are Pennsylvania corporations located at 2800 Pottsville Pike, P.O. Box 16001, Reading, PA 19612.[8] Defendant

[7] *See* Ex. 31 at VZ00698 (Excerpt from FirstEnergy 2018 Annual Report at 7 (Mar. 11, 2019)).

[8] *See* Ex. 32 at VZ00700 (Excerpt from Met-Ed Electric Generation Supplier Coordination Tariff at 1 (Apr. 17, 2019)); Ex. 33 at VZ00702 (Excerpt from Penelec Electric Generation Supplier Coordination Tariff at 1 (Apr. 17, 2019)).

Pennsylvania Power Company ("Penn Power") is a Pennsylvania corporation located at 233 Frenz Drive, New Castle, PA 16101.[9] Defendants are referred to collectively as "FirstEnergy."

3. FirstEnergy and Verizon are party to ten substantially similar joint use agreements that contain the rates, terms, and conditions for each party's use of the other party's utility poles. The joint use agreements were entered with Verizon's predecessor companies between 1958 and 1988 and were amended between 1999 and 2009 to include the currently operative pole attachment rate provisions. Five of the ten joint use agreements are with Met-Ed,[10] four are with Penelec,[11] and one is with Penn Power.[12]

[9] *See* Ex. 34 at VZ00704 (Excerpt from Penn Power Electric Generation Supplier Coordination Tariff at 1 (Apr. 17, 2019)).

[10] *See* Ex. 1 at VZ00165-183 (Agreement between Met-Ed and The Bell Tel. Co. of Pa. (1973), supplemented in 1983 ("Met-Ed-Bell JUA")); Ex. 2 at VZ00184-210 (Agreement between Met-Ed and Bethel & Mt. Aetna Tel. and Telegraph Co. (1968), amended in 1974 ("Met-Ed-Bethel JUA")); Ex. 3 at VZ00211-226 (Agreement between Met-Ed and Continental Tel. Co. of Pa. (1972), amended in 1972 ("Met-Ed-Contel JUA")); Ex. 4 at VZ00227-240 (Agreement between Met-Ed and Quaker State Tel. Co. (1971) ("Met-Ed-Quaker JUA")); Ex. 5 at VZ00241-295 (Agreement between Met-Ed and York Tel. and Telegraph Co. (1967), amended in 1974 and 1975 ("Met-Ed-York JUA")). Met-Ed charges Verizon pole attachment rent using a formula in four Memoranda of Understanding entered in 2009. *See* Ex. 6 at VZ00296-317 (Memoranda of Understanding Between Met-Ed and Verizon for Agreements 11001, 11002, 11007, 11008, 11011 (2009) ("Met-Ed MOUs")).

[11] *See* Ex. 7 at VZ00318-343 (Agreement between Penelec and Bell Tel. Co. of Pa. (1986) ("Penelec-Bell JUA")), Ex. 8 at VZ00344-369 (Agreement between Penelec and Continental Tel. Co. of Pa. (1988) ("Penelec-Contel JUA")), Ex. 9 at VZ00370-433 (Agreement between Penelec and General Tel. Co. of Pa. (1958), supplemented in 1966 ("Penelec-General JUA")), Ex. 10 at VZ00434-450 (Agreement between Penelec and Quaker State Telephone Company (1988) ("Penelec-Quaker JUA")). Penelec charges Verizon pole attachment rent using a formula in four Memoranda of Understanding entered in 2009. *See* Ex. 11 at VZ00451-466 (Memoranda of Understanding between Penelec and Verizon for Agreements 21001, 21005, 21010, 21011, 21022, 21025 (2009) ("Penelec MOUs")).

[12] *See* Ex. 12 at VZ00467-485 (Agreement between Penn Power and The Bell Tel. Co. of Pa. (1978), amended in 1999 ("Penn Power JUA")).

4. The 2018 rental year is the most recent year that all three defendants have invoiced Verizon for pole attachment rent.[13] According to the 2018 invoices, the joint use agreements cover 412,697 poles jointly used by the parties, with FirstEnergy owning 301,854 and Verizon owning 110,843.[14] FirstEnergy, therefore, owns 73% of the poles that the parties currently share—reflecting a three-to-one pole ownership advantage.[15]

5. The Commission has jurisdiction over this pole attachment rate dispute under 47 U.S.C. § 224.[16]

6. Defendants are "utilities" within the meaning of 47 U.S.C. § 224(a)(1) because each is an electric utility that owns or controls poles used, in whole or in part, for wire communications.[17] Defendants are not owned by any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.

[13] Ex. A at VZ00005 (Aff. of Stephen C. Mills, Nov. 19, 2019 ("Mills Aff.") ¶ 8). Penn Power has also invoiced and collected rent for the 2019 rental year. *Id.* at VZ00006 (Mills Aff. ¶ 10).

[14] *Id.* at VZ00005-06 (Mills Aff. ¶ 9).

[15] *See id.* FirstEnergy, therefore, has greater bargaining power than the two-to-one pole ownership advantage that justified rate relief in the *Dominion Order*. *See Verizon Va. v. Va. Elec. & Power Co.*, 32 FCC Rcd 3750, 3756-57 (¶ 13) (EB 2017) ("*Dominion Order*"). FirstEnergy also has at least a two-to-one pole ownership advantage at the operating company level. Met-Ed owns 81% of 159,448 poles shared with Verizon; Penelec owns 67% of 220,259 poles shared with Verizon; and Penn Power owns 78% of 32,990 poles shared with Verizon. *See* Ex. A at VZ00008, VZ00011, VZ00013 (Mills Aff. ¶¶ 16, 24, 28).

[16] 47 U.S.C. § 224(b)(1).

[17] *See* Ex. 35 at VZ00708 (Excerpt from FirstEnergy 2018 Form 10-K at 1 (Feb. 19, 2019)); *see also* 47 U.S.C. § 224(a)(1).

7. The Commonwealth of Pennsylvania has not certified to the Commission that it regulates the rates, terms, and conditions for pole attachments and so has not reverse-preempted the Commission's jurisdiction under 47 U.S.C. § 224(c).[18]

8. This is one of two related Complaints being filed with the Commission based, at least in part, on the same claims and same set of facts. Verizon's affiliate, Verizon Maryland LLC, is filing the related Complaint against FirstEnergy's affiliate, The Potomac Edison Company.[19] A separate action between the parties has not been filed with any court or other government agency based on the same claims or same set of facts, in whole or in part, and Verizon does not seek prospective relief that is identical to the relief proposed or at issue in a notice-and-comment rulemaking proceeding that is currently before the Commission.[20]

9. Before filing this complaint, Verizon notified FirstEnergy in writing of the allegations that form the basis of this complaint and invited a response within a reasonable period of time.[21] Verizon also, in good faith, engaged in face-to-face executive-level discussions

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[18] On August 29, 2019, the Pennsylvania Public Utility Commission ("PUC") voted to regulate pole attachments, but its "final form regulations" must still be "reviewed by the General Assembly, [Independent Regulatory Review Commission], and the Pennsylvania Attorney General's Office." *See Assumption of Comm'n Jurisdiction over Pole Attachments from the FCC*, No. L-2018-3002672, 2019 WL 4345730, at *10 (Pa. PUC Aug. 29, 2019). The FCC thus has jurisdiction over this pole attachment complaint dispute because Pennsylvania has not yet "sent [a letter] to the FCC certifying that the Commission will regulate pole attachments pursuant to the dictates of 47 U.S.C. § 224(c)(2)." *Id.*

[19] *See Verizon Md. LLC v. The Potomac Edison Co.*, Proceeding No. 19-___, Bureau ID No. EB-19-MD-___ (filed Nov. 20, 2019).

[20] Electric utilities have sought review of the Commission's new telecom rate presumption in a petition for reconsideration at the FCC and petition for review at the U.S. Court of Appeals for the Ninth Circuit. The presumption remains effective, however, and the pending petitions cannot affect Verizon's statutory right to just and reasonable pole attachment rates for use of FirstEnergy's poles.

[21] *See, e.g.*, Ex. 27 at VZ00592-646 (Letter from B. Trosper, Verizon, to S. Strah, FirstEnergy (Dec. 20, 2017)).

and had many discussions with FirstEnergy and its Maryland affiliate about the possibility of settlement.[22]

III. FACTS AND ARGUMENT

10. Verizon has been "entitled to pole attachment rates … that are just and reasonable" under 47 U.S.C. § 224(b)(1) since the July 12, 2011 effective date of the Commission's *Pole Attachment Order*, and has been presumptively entitled to the new telecom rate since the March 11, 2019 effective date of the Commission's *Third Report and Order*.[23] FirstEnergy instead has denied Verizon a just and reasonable rate, over-collecting rents by more than [redacted], on average, each year since 2011.[24] Because FirstEnergy has refused to negotiate just and reasonable rates, the Commission should apply its new telecom rate presumption and provide Verizon long-overdue rental rate relief and refunds of its prior overpayments.

A. Verizon Is Entitled to a Just and Reasonable Pole Attachment Rate.

11. For nearly a decade, the Commission has worked to ensure that pole attachment rates are "as low and close to uniform as possible" and has directed FirstEnergy and other electric utilities to stop charging "[d]ifferent rates for virtually the same resource (space on the pole)."[25] In its 2011 *Pole Attachment Order*, the Commission took the first step to reduce the pole attachment rates that ILECs like Verizon pay.[26] There, the FCC held ILECs are entitled to a

[22] Ex. A at VZ00014-21 (Mills Aff. ¶¶ 30-47).

[23] *Third Report and Order*, 33 FCC Rcd at 7769 (¶ 126); *Pole Attachment Order*, 26 FCC Rcd at 5331 (¶ 209).

[24] Ex. B at VZ00047 (Aff. of Mark S. Calnon, Ph.D., Nov. 19, 2019 ("Calnon Aff.") ¶ 23); *see also* Ex. C at VZ00107 (Aff. of Timothy J. Tardiff, Ph.D., Nov. 19, 2019 ("Tardiff Aff.") ¶ 6).

[25] National Broadband Plan at 110.

[26] *Pole Attachment Order*, 26 FCC Rcd at 5327-38 (¶¶ 199-220).

"competitively neutral" rate, meaning "'the same rate as [a] comparable provider,' *i.e.*, the New Telecom Rate or the Cable Rate,"[27] if the ILEC is "attaching to other utilities' poles on terms and conditions that are comparable to those that apply to a telecommunications carrier or a cable operator."[28] The Commission also set the pre-existing telecom rate as a "reference point" for the rate that may be charged if an ILEC attaches under terms and conditions that give it a net material advantage over its competitors.[29]

12. In spite of the 2011 *Pole Attachment Order*, electric utilities including FirstEnergy "continue[d] to charge [ILECs] pole attachment rates significantly higher than the rates charged to similarly situated telecommunications attachers."[30] As a result, in 2018, the Commission took the next step toward achieving rate reductions that should have occurred at least seven years earlier.[31] In the 2018 *Third Report and Order*, the Commission adopted a presumption that, for "new and newly-renewed pole attachment agreements," ILECs are comparable to their competitors and must be charged the same new telecom rate.[32] While the presumption is rebuttable, doing so requires clear and convincing evidence from the electric utility that the ILEC attaches to the utility's poles under a joint use agreement that gives the ILEC a net material advantage over its competitors.[33] If the presumption is rebutted, the pre-

[27] *Verizon Fla. LLC v. Fla. Power & Light Co.*, Mem. Op. and Order, 30 FCC Rcd 1140, 1142 (¶ 7) (EB 2015) ("*FPL Order*") (quoting *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 217)).

[28] *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 217).

[29] *Id.* at 5337 (¶ 218).

[30] *Third Report and Order*, 33 FCC Rcd at 7767 (¶ 123) (internal quotation marks omitted).

[31] *Id.* at 7767-71 (¶¶ 123-29).

[32] *Id.* at 7769 (¶ 126).

[33] *Id.* at 7770-71 (¶ 128).

existing telecom rate sets a "hard cap" on the rate that may be charged.[34] This means that, as of the March 11, 2019 effective date of the 2018 *Third Report and Order*, FirstEnergy and other electric utilities cannot under any circumstances lawfully charge ILECs more than the pre-existing telecom rate under a joint use agreement that, like the joint use agreements at issue here, is "new or newly renewed."[35]

13. FirstEnergy, however, has not reduced the rates it charges Verizon despite years of negotiations.[36] The Commission's intervention is needed to prevent FirstEnergy's continuing disregard of the Pole Attachment Act and Commission precedent. The Commission should apply its new telecom rate presumption and set the rate for Verizon's use of FirstEnergy's poles using the new telecom rate formula.[37] That is the correct rate under the presumption adopted in the 2018 *Third Report and Order*, as well as under the 2011 *Pole Attachment Order*'s standard of competitive neutrality. By enforcing Verizon's right to the new telecom rate in this case, the Commission will free at least [redacted] in annual pole attachment rent overpayments and ensure "greater rate parity between [I]LECs and their telecommunications competitors," which "can energize and further accelerate broadband deployment."[38]

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[34] *Id.* at 7771 (¶ 129).

[35] *Id.* at 7770-71 (¶¶ 127 n.475, 129).

[36] *See* Ex. A at VZ00014-21 (Mills Aff. ¶¶ 30-47).

[37] *See* Ex. C at VZ00107 (Tardiff Aff. ¶ 5).

[38] *Third Report and Order*, 33 FCC Rcd at 7769 (¶ 126); *see also* Ex. B at VZ00047-51 (Calnon Aff. ¶¶ 23-29) (calculating Verizon's average annual net rent overpayment to FirstEnergy as compared to the net rent that Verizon would have paid if rent was set for Verizon and FirstEnergy at proportional new telecom rates).

1. The New Telecom Rate Is the Just and Reasonable Rate Under the Presumption the 2018 *Third Report and Order* Established.

14. Although Verizon is presumptively entitled to the new telecom rate under the *Third Report and Order*, Verizon has been paying FirstEnergy rates [redacted] ***times as high*** on average because FirstEnergy refuses to negotiate just and reasonable rates.[39] Penelec and Penn Power charge Verizon per-pole rates that are at least [redacted] the per-pole new telecom rates that presumptively apply.[40] Met-Ed reaches the same result by charging Verizon an exceptionally high rate for a subset of joint use poles (sometimes referred to as "deficiency" poles), and by paying nothing for its use of Verizon's poles.[41] For comparative purposes, and as Met-Ed has acknowledged, these contract rates can be readily converted into "reciprocal" per-pole rates that charge both parties the same per-pole rate for use of the other party's poles.[42] When so converted, Met-Ed's rates, like the per-pole rates charged by the other defendants, have averaged more than [redacted] times the per-pole new telecom rates required by law since the effective date of the 2011 *Pole Attachment Order*:

[39] Ex. B at VZ00036-37, VZ00045-46 (Calnon Aff. ¶¶ 6, 21).

[40] For the 2011 to 2018 rental years, Penelec charged Verizon [redacted] per pole, and Penn Power charged Verizon [redacted] per pole. *See* Ex. A at VZ00012-13 (Mills Aff. ¶¶ 26, 29).

[41] For the 2011 to 2018 rental years, Met-Ed charged Verizon [redacted] per "deficiency" pole. *See id.* VZ00010 (Mills Aff. ¶ 21).

[42] *See* Ex. 21 at VZ00572 (Email from D. DeWitt, FirstEnergy, to S. Mills, Verizon (Apr. 12, 2017)) (calculating the equivalent reciprocal rate). For the 2011 to 2018 rental years, the equivalent reciprocal rates are [redacted] per pole, respectively. *See* Ex. B at VZ00045 (Calnon Aff. ¶ 19).

	Average Per-Pole Contract Rate (2011-2018)[43]	Average Per-Pole New Telecom Rate (2011-2018)[44]	Average Contract Rate Compared to Average New Telecom Rate
Met-Ed	[redacted]	$ 9.14	[redacted] times
Penelec	[redacted]	$ 7.22	[redacted] times
Penn Power	[redacted]	$ 8.89	[redacted] times
FirstEnergy	[redacted]	**$ 8.42**	[redacted] **times**

15. The Commission applied its new telecom rate presumption to "newly-negotiated and newly-renewed joint use agreements," including joint use agreements "that are automatically renewed, extended, or placed in evergreen status."[45] Here, the initial term of each joint use agreement has expired, and the agreements continue to govern the parties' joint use relationship in accordance with a provision in each joint use agreement that automatically renews and extends the agreement until it is terminated.[46] The new telecom rate presumption, therefore, applies.

16. In particular, each joint use agreement states that, after an initial term, the agreement "*shall continue* in force thereafter until terminated by either Party at any time" upon

[43] For the average per-pole joint use agreement rate charged by Met-Ed, this table uses the average per-pole reciprocal rate that is equivalent to the average rate Met-Ed charged. *See* Ex. B at VZ00045 (Calnon Aff. ¶ 20).

[44] For the 2011 to 2018 rental years, the properly calculated new telecom rates for Verizon's use of (1) Met-Ed's poles were $8.29, $9.87, $10.07, $5.02, $9.35, $8.79, $9.55, and $12.20 per pole, (2) Penelec's poles were $6.43, $6.79, $7.18, $5.21, $6.96, $7.18, $7.49, and $10.49 per pole, and (3) Penn Power's poles were $7.30, $8.47, $8.51, $8.21, $8.94, $9.40, $9.08, and $11.18 per pole. *See id.* at VZ00041-42 (Calnon Aff. ¶ 13).

[45] *Third Report and Order*, 33 FCC Rcd at 7770 (¶ 127 & n.475).

[46] The initial term of the joint use agreements varies from 1 year to 5 years, but the initial term for all of the joint agreements had expired by January 1, 1993. *See, e.g.*, Ex. 1 at VZ00180 (Met-Ed-Bell JUA, Art. XX) (1-year initial term); Ex. 7 at VZ00333 (Penelec-Bell JUA, Art. XXI) (5-year initial term). *See also* Ex. 10 at VZ00449 (Penelec-Quaker JUA, Art. XXI) (stating that initial term would expire "five (5) years from the [January 1, 1988] effective date hereof," meaning that the initial term expired on January 1, 1993).

advance written notice.[47] "Continue" is a synonym of "extend," meaning "[t]o carry further in time, space or development: *extend*."[48] The agreements, as a result, "automatically … extended" after the *Third Report and Order* took effect.[49] They also "automatically renewed" as their terms and conditions have "repeat[ed] so as to reaffirm" since the effective date.[50] Under Pennsylvania law, "a contractual provision pursuant to which a contract for a term is renewed automatically for a further term unless, before a specified date, one party gives notice of an intent to terminate" is "a so-called 'automatic renewal provision.'"[51] The joint use agreements are thus newly renewed and entitled to the Commission's new telecom rate presumption.[52]

17. FirstEnergy, therefore, must charge Verizon the new telecom rate unless FirstEnergy can rebut the Commission's newly enacted presumption with "clear and convincing

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[47] Ex. 1 at VZ00180 (Met-Ed-Bell JUA, Art. XX) (emphasis added). *Accord* Ex. 2 at VZ00196 (Met-Ed-Bethel JUA, Art. XIX); Ex. 3 at VZ00223 (Met-Ed-Contel JUA, Art. XVIII); Ex. 4 at VZ00239 (Met-Ed-Quaker JUA, Art. XVIII); Ex. 5 at VZ00253 (Met-Ed-York JUA, Art. XVIII); Ex. 7 at VZ00333 (Penelec-Bell JUA, Art. XXI); Ex. 8 at VZ00359 (Penelec-Contel JUA, Art. XXI); Ex. 9 at VZ00386 (Penelec-General JUA, Art. XXII); Ex. 10 at VZ00449 (Penelec-Quaker JUA, Art. XXI); Ex. 12 at VZ00482 (Penn Power JUA, Art. XXIV). Even if the joint use agreements are terminated, they continue to govern all poles jointly used by the parties at the time of termination due to "evergreen" provisions. *See* Section III.A.2.c, below. As a result, Verizon genuinely lacks the ability to terminate the current rental rate provisions. *See FPL Order*, 30 FCC Rcd at 1150 (¶ 25) (recognizing that Verizon "genuinely lacks the ability to terminate an existing agreement" where the electric utility can "force Verizon to pay the relatively high Agreement Rates for as long as its attachments remain on [the utility's] poles pursuant to the evergreen clause").

[48] "Continue," *Webster's II New College Dictionary* 244 (2001) (emphasis added); *see also* "Continue," *Merriam-Webster's Collegiate Dictionary* 270 (11th ed. 2003) ("to maintain without interruption a condition, course, or action").

[49] *Third Report and Order*, 33 FCC Rcd at 7770 (¶ 127 & n.475).

[50] *Id.*; *see also* "Renew," *Webster's II New College Dictionary* 938 (2001); "Renew," *Merriam-Webster's Collegiate Dictionary* 990 (10th ed. 1996).

[51] *Otis Elevator Co. v. George Wash. Hotel Corp.*, 27 F.3d 903, 904 (3d Cir. 1994).

[52] *Third Report and Order*, 33 FCC Rcd at 7770 (¶127 n.475).

evidence that [Verizon] receives net benefits under its pole attachment agreement[s] with [FirstEnergy] that materially advantage [Verizon] over other telecommunications attachers."[53] FirstEnergy cannot meet this standard, and it has not tried. Instead, FirstEnergy said—more than six years into rate discussions—that it was "willing to discuss" competitive advantages it thinks it provides Verizon.[54] The clear and convincing evidence standard requires much more.[55]

18. But even if FirstEnergy could meet its burden,[56] FirstEnergy still could not lawfully charge the rates it has been collecting from Verizon. The pre-existing telecom rate is "the maximum rate" an electric utility may charge if it is able to rebut the new telecom rate presumption.[57] FirstEnergy has instead charged Verizon rates since the effective date of the 2011 *Pole Attachment Order* that have been more than [redacted] the "hard cap" the pre-existing telecom formula sets:

[53] *Id.*; *see also* 47 C.F.R. § 1.1413(b).

[54] Ex. 29 at VZ00689 (Email from D. Karafa, FirstEnergy, to B. Trosper, Verizon (June 7, 2018)). FirstEnergy claimed that "the process of monetizing [the alleged] advantages that Verizon has over its competitors requires discovery from Verizon." *Id.* at VZ00690. Not so. FirstEnergy has exclusive access to its own license agreements and to the per-pole amounts it has received from Verizon and Verizon's competitors.

[55] *See, e.g.*, *Brown v. City of Pittsburgh*, 586 F.3d 263, 285 (3d Cir. 2009) ("clear and convincing evidence means [evidence] that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue") (citation omitted); *see also Microsoft Corp. v. i4i Ltd. P'ship*, 564 U.S. 91, 102 (2011) (clear and convincing evidence is a "heightened standard of proof"); *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984) (clear and convincing evidence must "instantly tilt[] the evidentiary scales" when weighed against the other evidence offered); *In the Matter of Connect Am. Fund*, 32 FCC Rcd 6282, 6314 (¶ 64) (2017) (clear and convincing evidence is a "higher standard" than preponderance of the evidence); *see also* Ex. C at VZ00122-125 (Tardiff Aff. ¶ 28).

[56] *But see* Section III.A.2.d, below.

[57] *Third Report and Order*, 33 FCC Rcd at 7771 (¶ 129).

	Average Per-Pole Contract Rate (2011-2018)[58]	**Average Per-Pole Pre-Existing Telecom Rate (2011-2018)**[59]	**Average Contract Rate Compared to Average Pre-Existing Telecom Rate**
Met-Ed	[redacted]	$ 13.86	[redacted] times
Penelec	[redacted]	$ 10.94	[redacted] times
Penn Power	[redacted]	$ 13.46	[redacted] times
FirstEnergy	[redacted]	**$ 12.75**	[redacted] **times**

19. There is, therefore, no lawful basis for the rates that FirstEnergy charges Verizon—rates that have been, on average, more than [redacted] per pole higher than the presumptive new telecom rate[60] and almost [redacted] per pole higher than the maximum rate FirstEnergy could charge even if it could rebut the presumption.[61] The Commission should enforce its new telecom rate presumption to achieve the "rate parity between incumbent LECs and their telecommunications competitors" that "can energize and further accelerate broadband deployment."[62]

[58] For the average per-pole joint use agreement rate charged by Met-Ed, this table uses the average per-pole reciprocal rate that is equivalent to the average contract rate Met-Ed charged. *See* Ex. B at VZ00045 (Calnon Aff. ¶ 20).

[59] For the 2011 to 2018 rental years, the properly calculated pre-existing telecom rates for Verizon's use of (1) Met-Ed's poles were $12.57, $14.96, $15.26, $7.61, $14.16, $13.32, $14.47, and $18.49 per pole; (2) Penelec's poles were $9.74, $10.29, $10.89, $7.89, $10.54, $10.88, $11.35, and $15.90 per pole; and (3) Penn Power's poles were $11.06, $12.83, $12.90, $12.44, $13.54, $14.24, $13.75, and $16.94 per pole. *See id.* at VZ00055 (Calnon Aff. ¶ 36).

[60] *Id.* at VZ00045-46 (Calnon Aff. ¶ 21) (calculating average [redacted] per-pole effective rate charged and average $8.42 per-pole new telecom rate, for a difference of [redacted] per pole); *see also* Ex. C at VZ00116-118 (Tardiff Aff. ¶¶ 16-19).

[61] Ex. B at VZ00055-56 (Calnon Aff. ¶ 37) (calculating average [redacted] per-pole effective rate charged and average $12.75 per-pole pre-existing telecom rate, for a difference of [redacted] per pole); *see also* Ex. C at VZ00116-119 (Tardiff Aff. ¶¶ 16-20).

[62] *Third Report and Order*, 33 FCC Rcd at 7769 (¶ 126).

2. The New Telecom Rate Is Also the Just and Reasonable Rate Under the Standard the 2011 *Pole Attachment Order* Established.

20. Verizon is entitled to new telecom rates under the presumption adopted in the 2018 *Third Report and Order*—but it has also been entitled to those same new telecom rates for over seven years under the standard the Commission adopted in the 2011 *Pole Attachment Order*. This case presents the characteristics that justified rate relief as of the *Pole Attachment Order*'s July 12, 2011 effective date: (a) the rates are unjust and unreasonable, (b) FirstEnergy has long had a three-to-one pole ownership advantage, (c) Verizon genuinely lacks the ability to terminate the rates and obtain new just and reasonable rates through negotiations, and (d) the joint use agreements do not provide Verizon a net material advantage over its competitors that supports a rate higher than the new telecom rate.

a) FirstEnergy Charges Unjust and Unreasonable Rates.

21. The rates FirstEnergy charges Verizon violate the principle of "competitive neutrality" the Commission adopted in the 2011 *Pole Attachment Order*, under which the "just and reasonable" rate for an ILEC is "the same rate" as the new telecom or cable rate that applies to a comparable cable or telecommunications provider.[63] Verizon has paid FirstEnergy more than [redacted] the new telecom rate[64] and more than [redacted] the pre-existing telecom rate,[65] which the *Pole Attachment Order* set as the upper-bound "reference point" on the rate that could be charged an ILEC that has a net material advantage over its competitors.[66] FirstEnergy's rates are thus "unjust and unreasonable" under the standard adopted in 2011.

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[63] *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 217); *see also FPL Order*, 30 FCC Rcd at 1142 (¶ 7).

[64] Ex. B at VZ00045-46 (Calnon Aff. ¶ 21).

[65] *Id.* at VZ00055-56 (Calnon Aff. ¶ 37).

[66] *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 217).

22. FirstEnergy charges Verizon rates that are also unjust and unreasonable as compared to the rates FirstEnergy pays for use of Verizon's poles. The Commission has found rate relief warranted where there was a "significant disparity in the per-pole rates charged to each party" because it "anticipat[ed] that incumbent LECs and electric utilities would charge each other roughly the same proportionate rate given the parties' relative usage of the pole."[67] Here, FirstEnergy also "uses significantly more space on each joint use pole than Verizon,"[68] but pays rental rates that do not reflect its greater space requirements.

23. Worse, Met-Ed has required Verizon to pay rent under a rate provision that does not charge Met-Ed anything for use of Verizon's poles.[69] Verizon has paid Met-Ed up to [redacted] per pole on the difference between the poles Verizon owns and the poles Verizon would own if it owned 45% of the joint use poles.[70] Met-Ed imposed this complex rate methodology in 2009 when it owned 81% of the joint use poles.[71] Verizon then for years tried unsuccessfully to purchase some of those poles under its contractual "right to purchase from time to time from the

[67] *Dominion Order*, 32 FCC Rcd at 3760 (quoting *Pole Attachment Order*, 26 FCC Rcd at 5337 (¶ 218 n.662).

[68] *Id.* at 3756-57 (¶ 13).

[69] *See* Ex. 6 at VZ00296-317 (Met-Ed MOUs).

[70] *Id.*

[71] Ex. A at VZ00007 (Mills Aff. ¶ 14).

other Party poles … in an attempt to balance ownership of jointly used poles."[72] Met-Ed refused to sell.[73]

24. The unreasonableness of the Met-Ed rate provision is particularly apparent when Verizon's annual rental payment is converted into a per-pole rate for each Met-Ed pole. For example, Verizon paid Met-Ed over [redacted] in pole attachment rent for the 2018 rental year.[74] Verizon would have paid the same amount if Verizon paid [redacted] per pole for each Met-Ed pole to which it was attached and Met-Ed paid nothing for each Verizon pole to which it was attached.[75] Under this scenario, Met-Ed paid nothing for use of at least 10.5 feet of space on Verizon's poles—but charged Verizon more than [redacted] times the applicable $12.20 per-pole new telecom rate for use of one foot of space on Met-Ed's poles.[76]

25. Penelec similarly charges Verizon higher pole attachment rates than Penelec is willing to pay Verizon for use of more space on Verizon's poles. For the 2018 rental year, for example, Penelec charged Verizon [redacted] per pole, but paid [redacted] per pole to use Verizon's

[72] *See id.* at VZ00007 (Mills Aff. ¶ 15); *see also* Ex. 1 at VZ00174 (Met-Ed-Bell JUA, Art. X); Ex. 2 at VZ00208 (Met-Ed-Bethel JUA, 1974 Amendment ¶ 1); Ex. 5 at VZ00294 (Met-Ed-York JUA, 1974 Amendment ¶ 2); *see also* Ex. 3 at VZ00216 (Met-Ed-Contel JUA, Art. IV) & Ex. 4 at VZ00232 (Met-Ed-Quaker JUA, Art. IV) ("[E]ach Company, if it so desires, will convey to the other, title to certain poles … so as to achieve a balance of ownership of jointly used poles.").

[73] Ex. A at VZ00007 (Mills Aff. ¶ 15).

[74] *Id.* at VZ00009 (Mills Aff. ¶ 20).

[75] Ex. B at VZ00043 (Calnon Aff. ¶ 17).

[76] *See* 47 C.F.R. § 1.1410 (presuming telecommunications attachments occupy 1 foot of space); Ex. A at VZ00029 (Mills Aff. ¶ 64); Ex. B at VZ00041 (Calnon Aff. ¶ 13); *see also* Ex. 30 at VZ00693-695 (Field Reference Guide Joint Use – FirstEnergy Operating Company (FEOC) Joint Use Complete Application Requirements (updated as of May 20, 2019) ("FirstEnergy Field Reference Guide")) (depicting electric facilities occupying more than 10.5 feet of space on a joint use pole).

poles.[77] These rates are upside-down under the Commission's space presumptions, which assume Penelec requires 10.5 feet of space on a pole and that Verizon requires one foot of space.[78] Requiring Verizon to pay a higher rate than Penelec pays is also incompatible with the space allocations in Verizon's joint use agreements with Penelec, which assign Penelec up to 9.66 feet of space on a joint use pole and designate three feet of space as "telephone space."[79] Penelec uses more space than it is allocated,[80] and Verizon uses far less space than it is allocated, sharing the "telephone space" with its competitors who pay additional rent to Penelec.[81] But the rates Penelec charges are unreasonable even under these unrealistic space allocations. Verizon is allocated less than one-third the space as Penelec but pays almost [redacted] more per pole.[82]

26. Penn Power also imposes rates that do not reflect its greater space needs. For the 2018 rental year, Penn Power charged Verizon [redacted] per pole but paid [redacted] per pole for use of Verizon's poles.[83] Penn Power thus paid [redacted] times the rate Verizon paid—even though it is allocated more than 2.5 times the space that is allocated to Verizon on a 40-foot pole under the

[77] Ex. A at VZ00011 (Mills Aff. ¶ 25).

[78] *See* 47 C.F.R. § 1.1410; Ex. A at VZ00029 (Mills Aff. ¶ 64).

[79] *See* Ex. 9 at VZ00388 (Penelec-General JUA, Ex. A); *see also* Exs. 7, 8, and 10 at VZ00330, VZ00356 and VZ00446, respectively (Penelec-Bell, Penelec-Contel, and Penelec-Quaker JUAs at Art. XVI) (assigning 8.66 feet of space to Penelec).

[80] The Penelec Agreements do not allocate 40 inches of safety space to Penelec, even though "the 40-inch safety space … is usable and used by the electric utility." *See In the Matter of Amendment of Commission's Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12130 (¶ 51) (2001) ("*Consolidated Partial Order*"); *see also In the Matter of Amendment of Rules and Policies Governing Pole Attachments*, Report and Order, 15 FCC Rcd 6453, 6467-68 (¶¶ 21-22) (2000).

[81] Ex. A at VZ00028-29 (Mills Aff. ¶ 63).

[82] Ex. B at VZ00046 (Calnon Aff. ¶ 22).

[83] Ex. A at VZ00013-14 (Mills Aff. ¶ 29).

joint use agreements.[84] And the real-world disparity is far worse, as the agreement allocates *less* space to Penn Power than it requires and uses,[85] while Verizon is allocated *more* space that it uses or desires, including space that it shares with its competitors.[86]

b) FirstEnergy Has Long Had a Three-to-One Pole Ownership Advantage.

27. At all relevant times, FirstEnergy has owned most of the joint use poles, an advantage that FirstEnergy leveraged to obtain the rates it charges and to continue charging them. Most recently, FirstEnergy estimated that it owns 73% of the poles that the parties share in Pennsylvania.[87] This nearly three-to-one pole ownership advantage gives FirstEnergy greater bargaining power than justified rate relief in the *Dominion Order*, where the power company owned 65% of the shared utility poles for a "nearly two-to-one pole ownership advantage."[88] It also gives FirstEnergy greater bargaining power than supported the Commission's conclusion in the 2011 *Pole Attachment Order* that ILECs "may not be in an equivalent bargaining position with electric utilities in pole attachment negotiations" because "electric utilities appear to own approximately 65-70 percent of poles."[89]

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[84] Ex. 12 at VZ00474 (Penn Power JUA, Art. IX) (designating 3 feet of "communications space" and allocating "remaining space" above "standard separation space" to Penn Power).

[85] *See id.* (excluding safety space from Penn Power's space allocations); *see also Consolidated Partial Order*, 16 FCC Rcd at 12130 (¶ 51) (holding "the 40-inch safety space … is usable and used by the electric utility").

[86] Ex. 12 at VZ00474 (Penn Power JUA at Art. IX); *see also* Ex. A at VZ00028-29 (Mills Aff. ¶¶ 63-64).

[87] *See* Ex. A at VZ00005 (Mills Aff. ¶ 9); *see also* Ex. C at VZ00116-117 (Tardiff Aff. ¶ 16).

[88] *Dominion Order*, 32 FCC Rcd at 3756-57 (¶ 13); *see also* Ex. C at VZ00118-119 (Tardiff Aff. ¶ 20).

[89] *Pole Attachment Order*, 26 FCC Rcd at 5329 (¶ 206); *see also* Ex. C at VZ00116-119 (Tardiff Aff. ¶¶ 16-20).

28. FirstEnergy has always been able to leverage its pole ownership advantage at the operating company level as well. During all relevant periods—in 2009 when the current rate provision was adopted and throughout the parties' post-2011 rate negotiations—Met-Ed owned 81% of the poles that it shares with Verizon.[90] Penelec has benefited from a two-to-one pole ownership at all relevant times; it owned 66% of the joint use poles when the rate provision was adopted in 2009 and now owns 67%.[91] Penn Power has owned 78% of the poles that it shares with Verizon, reflecting nearly a four-to-one pole ownership advantage that Penn Power continues to hold today.[92]

c) Verizon Genuinely Lacks the Ability to Terminate FirstEnergy's Rates and Obtain Just and Reasonable Rates Through Negotiations.

29. Rate relief is also justified under the standard adopted in the 2011 *Pole Attachment Order* because Verizon "genuinely lacks the ability to terminate" the current rates on account of "evergreen" clauses that require payment of the contract rates after the joint use agreements are terminated.[93] The Enforcement Bureau previously recognized Verizon

[90] Ex. A at VZ00007-08 (Mills Aff. ¶¶ 14-16); *see also* Ex. 6 at VZ00298, VZ00304, VZ00309, VZ00314 (Met-Ed MOUs).

[91] Ex. A at VZ00011 (Mills Aff. ¶¶ 23-24); *see also* Ex. 11 at VZ00453, VZ00458, VZ00463 (Penelec MOUs).

[92] Ex. A at VZ00012-13 (Mills Aff. ¶¶ 27-28).

[93] *See Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 216). The evergreen clauses provide, in essentially identical words, that "notwithstanding such termination [of the agreement] this agreement shall remain in full force and effect with respect to all poles jointly used by the parties at the time of such termination." *See* Ex. 2 at VZ00196 (Met-Ed-Bethel JUA, Art. XIX); *see also* Ex. 3 at VZ00223 (Met-Ed-Contel JUA, Art. XVIII); Ex. 4 at VZ00239 (Met-Ed-Quaker JUA, Art. XVIII); Ex. 5 at VZ00253 (Met-Ed-York JUA, Art. XVIII); Ex. 7 at VZ00333 (Penelec-Bell JUA, Art. XXI); Ex. 8 at VZ00359 (Penelec-Contel JUA, Art. XXI); Ex. 9 at VZ00386 (Penelec-General JUA, Art. XXII); Ex. 10 at VZ00449 (Penelec-Quaker JUA, Art. XXI); Ex. 12 at VZ00482 (Penn Power JUA, Art. XXIV).

"'genuinely lacks the ability to terminate an existing agreement'" where, as here, the electric utility can "force Verizon to pay the relatively high Agreement Rates for as long as its attachments remain on [the utility's] poles pursuant to the evergreen clause."[94]

30. Verizon also genuinely lacks the ability to renegotiate the rental rate provisions to obtain just and reasonable rates. Verizon has sought rate relief from FirstEnergy for years, focusing first on the rates imposed by Met-Ed and later expanding the discussions to include Penelec, Penn Power, and their Maryland affiliate, The Potomac Edison Company.[95] Because FirstEnergy has refused to agree to just and reasonable rates, FirstEnergy continues to overcharge Verizon by more than [redacted], on average, each year in Pennsylvania.[96]

31. Verizon's current effort to reduce its annual rental obligation began with a pole purchase initiative in 2009, two years before the Commission issued the *Pole Attachment Order*. Three of Verizon's agreements with Met-Ed include a "right to purchase" poles from Met-Ed, which Verizon sought to exercise in a way that would balance the parties' pole ownership numbers.[97] Met-Ed refused to sell any poles.[98] As a result, after the *Pole Attachment Order* took

[94] *FPL Order*, 30 FCC Rcd at 1150 (¶ 25) (quoting *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 216)).

[95] Ex. A at VZ00014-21 (Mills Aff. ¶¶ 30-47).

[96] Ex. B at VZ00051 (Calnon Aff. ¶ 29).

[97] Ex. 17 at VZ00550-552 (Letter from W. Balcerski, Verizon, to M. Wolfe, FirstEnergy (Apr. 30, 2012)); *see also* Ex. 1 at VZ00174 (Met-Ed-Bell JUA, Art. X); Ex. 2 at VZ00208 (Met-Ed-Bethel JUA, 1974 Amendment ¶ 1); Ex. 5 at VZ00294 (Met-Ed-York JUA, 1974 Amendment ¶ 2); *see also* Ex. 3 at VZ00216 (Met-Ed-Contel JUA, Art. IV) & Ex. 4 at VZ00232 (Met-Ed-Quaker JUA, Art. IV) ("[E]ach Company, if it so desires, will convey to the other, title to certain poles … so as to achieve a balance of ownership of jointly used poles.").

[98] Ex. A at VZ00007 (Mills Aff. ¶ 15).

effect, Verizon paired its pole purchase request with a request for "just and reasonable" pole attachment rates.[99]

32. Since early 2012, Verizon has tried unsuccessfully to negotiate just and reasonable rates with FirstEnergy through face-to-face meetings, telephone conferences, and correspondence.[100] FirstEnergy has claimed that Verizon is not eligible for rate relief because the joint use agreements pre-date the 2011 *Pole Attachment Order*[101]—an argument the Commission has rejected.[102] It has stalled rate discussions by insisting the companies first discuss new operational terms.[103] And it has made rate offers that failed to change Verizon's annual net rental payment in any material respect.[104] For example, five years into the negotiations, FirstEnergy made an offer that would have reduced Verizon's nearly [redacted] annual net rental obligation to Met-Ed by just $465.[105] Its next offer was for about a 1.5% discount off that [redacted] annual net rental amount, so that Verizon would pay about [redacted]

[99] *See* Ex. 17 at VZ00551 (Letter from W. Balcerski, Verizon, to M. Wolfe, FirstEnergy (Apr. 30, 2012)); Ex. 19 at VZ00557 (Email from N. Parrish, Verizon, to L. Chapman, FirstEnergy (Sept. 10, 2012)).

[100] Ex. A at VZ00014-21 (Mills Aff. ¶¶ 30-47).

[101] *See* Ex. 20 at VZ00562 (Letter from T. Magee, Counsel for FirstEnergy, to W. Balcerski, Verizon (Jan. 25, 2013) (quoting *Pole Attachment Order*, 26 FCC Rcd at 5335 (¶ 216)).

[102] *See FPL Order*, 30 FCC Rcd at 1145 (¶ 17) ("Florida Power makes a threshold argument that the just and reasonable rate requirement in Section 224(b)(1) cannot be applied to the Agreement Rates because the Agreement pre-dates the Order. Florida Power is mistaken…").

[103] Ex. A at VZ00014 (Mills Aff. ¶ 33).

[104] *Id.* at VZ00018 (Mills Aff. ¶ 39).

[105] Ex. 21 at VZ00570-572 (Email from D. DeWitt, FirstEnergy, to S. Mills, Verizon (Apr. 3, 2017)) (offering to reduce Verizon's 2015 rental obligation to Met-Ed from [redacted] to [redacted]).

[redacted] in net rent to Met-Ed.[106] Properly calculated new telecom rental rates that year would have resulted in a net rental payment to Met-Ed of about $739,000.[107]

33. FirstEnergy's offers did not materially improve. In May 2018, FirstEnergy made an offer that paired lower rates for FirstEnergy to pay Verizon ([redacted] per pole) with higher rates for Verizon to pay First Energy ([redacted] per pole to Met-Ed, [redacted] per pole to Penelec, and [redacted] per pole to Penn Power) even though FirstEnergy uses much more space on a pole,[108] and the Commission "anticipat[ed] that incumbent LECs and electric utilities would charge each other roughly the same proportionate rate given the parties' relative usage of the pole."[109] The offer also limited rate relief to just two of the four FirstEnergy companies, as it would have increased Verizon's annual rental obligation to Penn Power by more than [redacted] and to Maryland affiliate Potomac Edison, by more than [redacted].[110]

34. FirstEnergy also avoided discussion of alleged competitive benefits, finally providing an unsupported and conclusory list of purported benefits in June 2018.[111] FirstEnergy did not distinguish among FirstEnergy operating companies[112] and has still not provided an

[106] Ex. 23 at VZ00577 (Email from D. DeWitt, FirstEnergy, to S. Mills, Verizon (July 21, 2017)) (proposing that Verizon pay [redacted] per pole and Met-Ed [redacted] per pole, for a net rental payment of [redacted]).

[107] Ex. B at VZ00048-49 (Calnon Aff. ¶ 26).

[108] *See* Ex. 28 at VZ00650 (Email from S. Schafer, FirstEnergy to J. Slavin, Verizon (May 2, 2018)).

[109] *Dominion Order*, 32 FCC Rcd at 3760 (quoting *Pole Attachment Order*, 26 FCC Rcd at 5337 (¶ 218 n.662).

[110] Ex. A at VZ00020 (Mills Aff. ¶ 45).

[111] Ex. 29 at VZ00690 (Email from D. Karafa, FirstEnergy, to B. Trosper, Verizon (June 7, 2018)).

[112] *Id.*; *see also* Ex. A at VZ00020-21 (Mills Aff. ¶ 46).

executed license agreement to support its claim, even though Verizon has been asking for copies of license agreements since 2012.[113] FirstEnergy instead relied on an unsigned "template" agreement [redacted] and said that "modifications" to the draft agreement "are negotiated" with Verizon's competitors.[114] Verizon has access to two license agreements that FirstEnergy entered with Verizon's affiliates, and each bears little resemblance to the draft agreement FirstEnergy produced.[115] But even a review of the draft license agreement, which at best reflects FirstEnergy's starting point during negotiations, confirmed the joint use agreements do not provide Verizon a net material advantage over its competitors.[116]

35. In November 2017, Verizon tried to change the dynamic by engaging executives at both companies in the discussions.[117] FirstEnergy first asked "whether [Verizon] insist[s] on

[113] Ex. A at VZ00014-17, VZ00021 (Mills Aff. ¶¶ 31, 35, 36, 48); *see also* Ex. 17 at VZ00551 (Letter from W. Balcerski, Verizon, to M. Wolfe, FirstEnergy (Apr. 30, 2012)) (requesting copies of license agreements); Ex. 19 at VZ00557 (Email from N. Parrish, Verizon, to L. Chapman, FirstEnergy (Sept. 10, 2012)) (requesting copies of license agreements); Ex. 22 at VZ00574 (Email from S. Mills, Verizon, to S. Schafer, FirstEnergy (July 7, 2017)) (requesting copies of license agreements).

[114] Ex. 23 at VZ00577 (Email from D. DeWitt, FirstEnergy, to S. Mills, Verizon (July 21, 2017)); *see also* Ex. 13 at VZ00486-503 (Draft Pole Attachment Agreement Between Metropolitan Edison Company and Attaching Company Name ("Draft License")).

[115] *See* Ex. 14 at VZ00504-515 (Attachment Agreement Between Met-Ed and Penelec, as "Owner," and Bell Atlantic-Pennsylvania, as "Licensee" (Sept. 25, 1988) ("Bell License")); Ex. 15 at VZ00516-530 (Telecommunication Pole and Anchor Attachment License Agreement Between Potomac Edison et al., as "Owner," and MCI Communications Services, Inc., as "Licensee" (Aug. 1, 2009) ("MCI License")).

[116] Ex. A at VZ00017 (Mills Aff. ¶ 38).

[117] Ex. 25 at VZ00588 (Letter from S. Mills, Verizon, to D. DeWitt, FirstEnergy (Nov. 2, 2017)).

proceeding to executive level discussions,"[118] but ultimately agreed to schedule the meeting after Verizon reiterated its request and provided a copy of its new telecom rate calculations.[119]

36. The parties' executives met on April 11, 2018 and continued discussions thereafter.[120] FirstEnergy continued to claim the contract rates are "just and reasonable"[121] and that Verizon cannot be eligible for a new telecom rate unless it "transition[s] … out of the pole-owning business in FirstEnergy service territories."[122] FirstEnergy's conduct makes clear it intends to continue to charge Verizon contract rates more than [redacted] times the new telecom rates that FirstEnergy may charge Verizon's competitors until the Commission orders it to stop. Verizon "genuinely lacks the ability to terminate an existing agreement and obtain a new arrangement."[123]

d) FirstEnergy Has Not and Cannot Identify Any Agreement Provision that Provides Verizon a Net Material Advantage Over Its Competitors.

37. Under the principle of "competitive neutrality" adopted in 2011, FirstEnergy should have charged Verizon "the same rate" that applies to Verizon's competitors (meaning the new telecom rate) because Verizon does not receive net competitive benefits under the joint use

[118] Ex. 26 at VZ00591 (Letter from D. DeWitt, FirstEnergy, to S. Mills, Verizon (Dec. 20, 2017)).

[119] Ex. 27 at VZ00593-594 (Letter from B. Trosper, Verizon, to S. Strah, FirstEnergy (Dec. 20, 2017)).

[120] Ex. A at VZ00019-20 (Mills Aff. ¶ 43).

[121] Ex. 28 at VZ00648 (Email from S. Schafer, FirstEnergy, to J. Slavin, Verizon (May 11, 2018).

[122] *Id.* at VZ00651 (Email from S. Schafer, FirstEnergy, to J. Slavin, Verizon (May 2, 2018)).

[123] *Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 216).

agreements that justify a higher rate—let alone rates averaging over [redacted] more per pole.[124] FirstEnergy has not, and cannot, show that this recurring annual per-pole premium is justified.

38. In some ways, the joint use agreements are comparable to FirstEnergy's license agreements, but in other ways they are less advantageous. For example, the joint use agreements are similar to FirstEnergy's license agreements in that Verizon, like its competitors, must bear the costs associated with placing, maintaining, rearranging, transferring, and removing its attachments.[125] Verizon is also required, like its competitors, to make a written application for

[124] *See Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 217); *FPL Order*, 30 FCC Rcd at 1142 (¶ 7); *see also* Ex. B at VZ00051-56 (Calnon Aff. ¶¶ 30-35).

[125] For Met-Ed, *see* Ex. 2 at VZ00190 (Met-Ed-Bethel JUA, Art. VI(c)) ("Each party shall place, transfer and rearrange its own attachments …."); *see also* Ex. 1 at VZ00169, VZ00171 (Met-Ed-Bell JUA, Arts. IV(C), VI(B)); Ex. 3 at VZ00216 (Met-Ed-Contel JUA, Art. V(c)); Ex. 4 at VZ00232 (Met-Ed-Quaker JUA, Art. V(c)); Ex. 5 at VZ00247 (Met-Ed-York JUA, Art. IV(c)). For Penelec and Penn Power, *see* Ex. 7 at VZ00324 (Penelec-Bell JUA, Art. VI(B)) ("Each party shall be responsible for placing, transferring and rearranging its own facilities."); *see also* Ex. 8 at VZ00350 (Penelec-Contel JUA, Art. VI(B)); Ex. 9 at VZ00375 (Penelec-General JUA, Art. IV(c)); Ex. 10 at VZ00440 (Penelec-Quaker JUA, Art. VI(B)); Ex. 12 at VZ00473 (Penn Power JUA, Art. VI(B)). For comparable license agreement provisions, *see* Ex. 15 at VZ00520 (MCI License ¶ 4) ("Licensee shall repair, maintain and remove its cable facilities …"); *see also* Ex. 14 at VZ00507 (Bell License, Art. IV(1a)); Ex. 13 at VZ00491 (Draft License [redacted]).

space on FirstEnergy's poles,[126] to comply with FirstEnergy's construction specifications,[127] and to accommodate third parties attached to FirstEnergy's poles.[128]

39. There are terms and conditions in the joint use agreements that *disadvantage* Verizon as compared to its competitors. For example, unlike its competitors, Verizon must "at its sole expense" determine the condition of more than 110,000 joint use poles that it owns and shares with FirstEnergy, keep them "in a safe and serviceable condition," and replace or repair its poles as they become defective.[129] FirstEnergy has itself recognized that this unique pole

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[126] For Met-Ed, *see* Ex. 1 at VZ00170 (Met-Ed-Bell JUA, Art. V(A)) ("Whenever either party desires to make attachments on any pole owned by the other party, it shall make written request therefor …"); *see also* Ex. 2 at VZ00189 (Met-Ed-Bethel JUA, Art. VI(a)); Ex. 3 at VZ00216 (Met-Ed-Contel JUA, Art. V(a)); Ex. 4 at VZ00232 (Met-Ed-Quaker JUA, Art. V(a)); Ex. 5 at VZ00246 (Met-Ed-York JUA, Art. IV(a)). For Penelec and Penn Power, *see* Ex. 7 at VZ00324 (Penelec-Bell JUA, Art. VI(A)) ("Whenever either party desires to make an initial attachment to or reserve space on any pole owned by the other party, it shall make written application …"); *see also* Ex. 8 at VZ00350 (Penelec-Contel JUA, Art. VI(A)); Ex. 9 at VZ00375 (Penelec-General JUA, Art. IV(a)); Ex. 10 at VZ00440 (Penelec-Quaker JUA, Art. VI(A)); Ex. 12 at VZ00472 (Penn Power JUA, Art. VI(A)). For comparable license agreement provisions, *see* Ex. 14 at VZ00506 (Bell License, Art. I(3) ("Licensee may also from time to time make attachments to additional poles of Owner … by submitting further application …"); *see also* Ex. 15 at VZ00520 (MCI License ¶ 3); Ex. 13 at VZ00489-490 (Draft License [redacted]).

[127] *See* Ex. 1 at VZ00168 (Met-Ed-Bell JUA, Art. III); Ex. 2 at VZ00188 (Met-Ed-Bethel JUA, Art. III); Ex. 3 at VZ00215 (Met-Ed-Contel JUA, Art. III); Ex. 4 at VZ00231 (Met-Ed-Quaker JUA, Art. III); Ex. 5 at VZ00246 (Met-Ed-York JUA, Art. III); Ex. 7 at VZ00323 (Penelec-Bell JUA, Art. III); Ex. 8 at VZ00349 (Penelec-Contel JUA, Art. III); Ex. 9 at VZ00375 (Penelec-General JUA, Art. III); Ex. 10 at VZ00439 (Penelec-Quaker JUA, Art. III); Ex. 12 at VZ00471 (Penn Power JUA, Art. III); Ex. 14 at VZ00508 (Bell License, Art. IV(2)); Ex. 15 at VZ00522 (MCI License ¶ 7(b)); Ex. 13 at VZ00491 (Draft License [redacted]).

[128] *See* Ex. 1 at VZ00177 (Met-Ed-Bell JUA, Art. XIV); Ex. 2 at VZ00194 (Met-Ed-Bethel JUA, Art. XIV); Ex. 3 at VZ00221 (Met-Ed-Contel JUA, Art. XIII); Ex. 4 at VZ00237 (Met-Ed-Quaker JUA, Art. XIII); Ex. 5 at VZ00251 (Met-Ed-York JUA, Art. XIII); Ex. 7 at VZ00328 (Penelec-Bell JUA, Art. XIII); Ex. 8 at VZ00354 (Penelec-Contel JUA, Art. XIII); Ex. 9 at VZ00383 (Penelec-General JUA, Art. XIV); Ex. 10 at VZ00444 (Penelec-Quaker JUA, Art. XIII); Ex. 12 at VZ00477 (Penn Power JUA, Art. XV); Ex. 14 at VZ00511 (Bell License, Art. IX(1)); Ex. 15 at VZ00520-521 (MCI License ¶ 5); Ex. 13 at VZ00498 (Draft License [redacted]).

[129] *See* Ex. 1 at VZ00172 (Met-Ed-Bell JUA, Art. VIII(A)); *see also* Ex. 2 at VZ00191 (Met-Ed-Bethel JUA, Art. IX(a)); Ex. 3 at VZ00217 (Met-Ed-Contel JUA, Art. VIII(a)); Ex. 4 at

ownership requirement imposes "substantial" costs on ILECs, including Verizon, that are not imposed on their competitors.[130] Verizon is subject to other unique costs as well, as Verizon must provide FirstEnergy access to Verizon's poles under the same terms and conditions that apply to Verizon's use of FirstEnergy's poles.[131] On this point, FirstEnergy agreed with Verizon in Reply Comments it filed with the Commission, admitting that Verizon is subject to "burdens and obligations" that are *not* imposed on Verizon's competitors because joint use agreements, but not license agreements, "impose[ ] mutual obligations on both parties.[132]

40. Because the terms and conditions in the joint use agreements are comparable or less advantageous than those in FirstEnergy's license agreements,[133] it is "appropriate to use the

VZ00233 (Met-Ed-Quaker JUA, Art. VIII(a)); Ex. 5 at VZ00248 (Met-Ed-York JUA, Art. VII(a)); Ex. 7 at VZ00326 (Penelec-Bell JUA, Art. VIII(A)); Ex. 8 at VZ00352 (Penelec-Contel JUA, Art. VIII(A)); Ex. 9 at VZ00377 (Penelec-General JUA, Art. VII(a)); Ex. 10 at VZ00442 (Penelec-Quaker JUA, Art. VIII(A)); Ex. 12 at VZ00474 (Penn Power JUA, Art. VIII(A)).

[130] *See* Comments of FirstEnergy et al. at 131, *In the Matter of Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245 (Aug. 16, 2010) ("Unlike cable companies and CLECs, which do not own their own distribution poles, ILECs do own and control millions of distribution poles across the country."); *id.* at 5 ("For decades, [CLECs and cable companies] have attached their facilities to tens of millions of utility poles – at artificial and extremely modest rates mandated by the Commission – without incurring the *substantial cost and inconvenience of constructing and maintaining their own distribution systems*.") (emphasis added); *see also* Reply Comments of FirstEnergy et al. at 35, *In the Matter of Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245 (Oct. 4, 2010) ("One of the 'burdens' for Verizon and other ILEC pole owners in joint use agreements is that they need to pay more pole costs than they would if they were not joint pole owners.") ("2010 Reply Comments").

[131] *See Dominion Order*, 32 FCC Rcd at 3760 (¶ 21) ("By identifying as alleged 'benefits' to Verizon services that Verizon is likewise required to extend to Dominion under the Joint Use Agreements, Dominion has failed to show that Verizon receives a disproportionate benefit ….").

[132] 2010 Reply Comments at 35 (citing Comments of Verizon at 18 (Aug. 16, 2010)).

[133] Ex. A at VZ00017 (Mills Aff. ¶ 38); Ex. B at VZ00051-56 (Calnon Aff. ¶¶ 30-35); Ex. C at VZ00122-125 (Tardiff Aff. ¶ 28).

rate of the comparable attacher as the 'just and reasonable' rate for purposes of section 224(b)."[134]

41. FirstEnergy has insisted it can continue to charge far higher rates based on a scattershot list of twenty-four purported "advantages."[135] FirstEnergy did not distinguish among operating companies or quantify the value of the alleged advantages.[136] But even based on the information available to Verizon, FirstEnergy's list fails to identify anything that provides Verizon a net material advantage over its competitors that would justify charging Verizon rates that have been over [redacted] more per pole than the properly calculated new telecom rates.[137]

42. FirstEnergy's list of twenty-four claimed advantages is repetitive, often listing the same alleged "advantage" multiple times as though to increase its value. Without the duplication, FirstEnergy's list boils down to ten alleged advantages.[138]

43. *First,* FirstEnergy relies on a one-time $1,000 "agreement preparation fee" that it claims to collect from Verizon's competitors,[139] although the fee does not appear in all of

[134] *See Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 217).

[135] *See* Ex. 29 at VZ00690 (Email from D. Karafa, FirstEnergy, to B. Trosper, Verizon (June 7, 2018)).

[136] *Id.*; Ex. A at VZ00021 (Mills Aff. ¶ 48); *see also* Ex. B at VZ00054 (Calnon Aff. ¶ 34); Ex. C at VZ00122-125 (Tardiff Aff. ¶ 28).

[137] *See Pole Attachment Order*, 26 FCC Rcd at 5336 (¶ 217); *FPL Order*, 30 FCC Rcd at 1142 (¶ 7); *see also* Ex. B at VZ00045-46, VZ00051-54 (Calnon Aff. ¶¶ 21, 30-34).

[138] Ex. A at VZ00021 (Mills Aff. ¶ 48).

[139] *See* Ex. 29 at VZ00690 (Email from D. Karafa, FirstEnergy, to B. Trosper, Verizon (June 7, 2018)) (alleging that "Verizon does not pay any agreement preparation fees as do Verizon's competitors"); *see also* Ex. 14 at VZ00512 (Bell License, Art. XII(1)) ("Licensee shall pay to Owner, upon execution of this Agreement, a license preparation and administration fee of One Thousand ($1,000.00) Dollars.").

FirstEnergy's license agreements.[140] But even if FirstEnergy consistently collected this one-time fee from Verizon's competitors, it would not justify continuing to charge Verizon a higher rental rate—let alone a higher, annually recurring rental rate for each of the more than 301,000 FirstEnergy poles to which Verizon is attached in Pennsylvania.[141] And while Verizon may not have paid FirstEnergy a one-time "agreement preparation fee" to access FirstEnergy's poles, FirstEnergy also did not pay the "agreement preparation fee" to access Verizon's poles. As a result, any value to Verizon from not paying the fee was entirely offset by the same value that Verizon provided FirstEnergy, resulting in no "net" benefit to Verizon.[142]

44. *Second,* FirstEnergy points to non-existent differences in the permitting process, claiming Verizon has been provided "speed to market" worth "millions" because Verizon does not pay FirstEnergy application fees and need not wait for FirstEnergy's permitting process to attach or overlash.[143] These claims are unfounded. It is not clear that Verizon's competitors pay

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[140] *Compare* Ex. 15 (MCI License) *with* Ex. 14 at VZ00512 (Bell License, Art. XII(1)) *and* Ex. 13 at VZ00498 (Draft License [redacted]).

[141] In one year, a $1,000 agreement preparation fee would have been fully covered by a less than one-cent increase in Verizon's rental rate. ($1,000 one-time fee / 301,854 FirstEnergy joint use poles in Pennsylvania = $0.003). Verizon has instead been paying FirstEnergy annually recurring rates that have averaged over [redacted] more per pole than the new telecom rate applicable to Verizon's competitors. Ex. B at VZ00045-46 (Calnon Aff. ¶ 21).

[142] *See Third Report and Order*, 33 FCC Rcd at 7768 (¶ 123) (requiring utility to prove that the ILEC "receives *net benefits* under its pole attachment agreement with the utility that materially advantage the incumbent LEC over other telecommunications attachers") (emphasis added); *see also Dominion Order*, 32 FCC Rcd at 3760 (¶ 21) ("By identifying as alleged 'benefits' to Verizon services that Verizon is likewise required to extend to Dominion under the Joint Use Agreements, Dominion has failed to show that Verizon receives a disproportionate benefit …."); *see also* Ex. C at VZ00122-125 (Tardiff Aff. ¶ 28).

[143] Ex. 29 at VZ00690 (Email from D. Karafa, FirstEnergy, to B. Trosper, Verizon (June 7, 2018)) (alleging that "Verizon does not pay any attachment application fees as do Verizon's competitors," that "Verizon does not have to wait for the permitting process to receive permission to attach and so can serve customers faster and with less expense than its competitors," that "[u]nlike new attachers, Verizon can overlash at will without having to wait

application fees either,[144] especially since FirstEnergy cannot impose such fees unless it can show that it does not already recover such costs through its annual rate calculation.[145] And Verizon and its competitors wait a comparable amount of time to attach comparable facilities.[146] The same notifications and work are required before an attachment and the same make-ready timelines and overlashing rules apply.[147] There is, therefore, no material difference between Verizon and its competitors in the one-time permitting process that would justify charging Verizon a higher rate for every pole every year.[148]

45. *Third*, FirstEnergy incorrectly claims Verizon incurs lower engineering, make-ready, and pre-and post-installation survey costs.[149] Verizon completes much of this work itself,

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for the permitting process to receive permission to attach in the first place. This allows Verizon to serve customers faster and with far less expense than its competitors," and that "Verizon's speed to market compared to new attachers (and even existing third party attachers) is worth millions to Verizon, and costs millions to its competitors").

[144] *See* Ex. 30 at VZ00693-695 (FirstEnergy Field Reference Guide).

[145] *See Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles*, 2 FCC Rcd 4387, 4393 (¶ 44) (1987) ("A separate charge or fee for items such as application processing … is not justified if the costs associated with these items are already included in the rate…."); *Cavalier Tel., LLC v. Va. Elec. and Power Co.*, 15 FCC Rcd 9563, 9574 (¶ 22) (2000), *vacated by settlement*, 17 FCC Rcd 24414 (2002) ("Because Respondent provided no explanation that the administrative costs associated with permit application processing are not otherwise included in the carrying charges, we find that the fees are an unjust and unreasonable rate, term, or condition.").

[146] *See* Ex. A at VZ00024 (Mills Aff. ¶ 54).

[147] *See id.* FirstEnergy's draft license agreement purports to require [redacted], but this requirement is unenforceable under Commission rules and precedent. *See* Ex. 13 at VZ00491 (Draft License [redacted]). *But see* 47 C.F.R. § 1.1415(a); *Third Report and Order*, 33 FCC Rcd at 7761 (¶ 115).

[148] Ex. A at VZ00023-24 (Mills Aff. ¶¶ 53-54).

[149] Ex. 29 at VZ00690 (Email from D. Karafa, FirstEnergy, to B. Trosper, Verizon (June 7, 2018)) (alleging that "Verizon's make-ready costs are dramatically lower than its competitors' costs," that "Verizon's engineering costs are dramatically lower than its competitors' costs," that "Verizon's survey costs are dramatically lower than its competitors' costs," that "Verizon is not subject to audit costs as are Verizon's competitors," that "[p]re-planning makes room in advance

surveying a pole to determine what make-ready is required, completing the engineering necessary to accommodate its attachment, transferring its facilities when required, and reviewing its attachments post-installation to ensure they comply with applicable standards.[150] FirstEnergy follows a comparable approach under its license agreements, which require "Licensee [to] submit with each application a survey of the subject poles,"[151] place on Licensee an obligation to "transfer its facilities,"[152] and clarify that the "Licensee [may] engineer all new line extensions and any rebuild of existing facilities on [FirstEnergy]'s poles."[153] Verizon's competitors may also complete their own engineering, survey, and simple make-ready work under the Commission's one-touch make-ready rules.[154] And, if FirstEnergy does perform some of this work for Verizon's competitors, FirstEnergy still could not rely on that difference to collect higher rentals from Verizon. FirstEnergy's draft license agreement, for example, merely reserves the right [redacted][155] If such costs are ever incurred by Verizon's competitors,[156] Verizon incurs

for Verizon, and Verizon benefits considerably from being the first attacher on an unencumbered pole," that "[n]ew attachers that wish to compete with Verizon must contend with already-congested poles," and that "[p]ole transfer provisions relieve Verizon of considerable attachment transfer costs that third party attacher competitors must incur.").

[150] Ex. A at VZ00024 (Mills Aff. ¶ 55); *see also, e.g.*, Ex. 2 at VZ00190 (Met-Ed-Bethel JUA, Art. VI(c)) ("Each party shall place, transfer, and rearrange its own attachments …."); Ex. 7 at VZ00324 (Penelec-Bell JUA, Art. VI(B)) & Ex. 12 at VZ00473 (Penn Power JUA, Art. VI(B)) ("Each party shall be responsible for placing, transferring and rearranging its own facilities.").

[151] Ex. 15 at VZ00524-525 (MCI License ¶ 14).

[152] Ex. 14 at VZ00507 (Bell License, Art. IV(1a)).

[153] *Id.* at VZ00508 (Bell License, Art. V(2)).

[154] 47 C.F.R. § 1.1411(j).

[155] Ex. 13 at VZ00493 (Draft License [redacted]).

[156] If FirstEnergy decides to conduct these discretionary inspections, it cannot charge licensees for the cost if it is already captured in its rental rates. *See Amendment of Rules and Policies*

comparable costs because it performs its own safety checks, at no cost to FirstEnergy.[157] And where Verizon "performs [that] particular service itself and incurs costs comparable to its competitors in performing that service," FirstEnergy may not increase Verizon's rental rate based on "costs that [FirstEnergy] does not incur."[158]

46. When FirstEnergy does perform make-ready work at Verizon's request, Verizon is not advantaged over its competitors. In the Penelec territory, FirstEnergy invoices Verizon—as FirstEnergy apparently invoices Verizon's competitors—using a cost-causer approach that requires Verizon to pay for make-ready that FirstEnergy completes to accommodate Verizon's attachments.[159] In the Met-Ed and Penn Power territories, FirstEnergy instead treats make-ready as a reciprocal obligation—something that has imposed higher costs on Verizon than the cost-causer approach that applies to Verizon's competitors.[160] Under this reciprocal approach, Verizon incurs the make-ready costs FirstEnergy causes, instead of the far lower make-ready costs Verizon has required.[161] For example, since 2014, FirstEnergy has required more than seven times the pole replacements that Verizon has required in the Met-Ed and Penn Power

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Governing the Attachment of Cable Television Hardware to Utility Poles, 2 FCC Rcd at 4393 (¶ 44) ("A separate charge or fee for items such as … periodic inspections of the pole plant is not justified if the costs associated with these items are already included in the rate….").

[157] Ex. A at VZ00021-22 (Mills Aff. ¶ 49).

[158] *Dominion Order*, 32 FCC Rcd at 3759 (¶ 18); *see also id.* (n.67) ("Dominion cannot justify charging higher rates to Verizon based on costs that only Verizon incurs. To charge a higher rate on this basis would effectively double charge Verizon ….); *see also* Ex. C at VZ00122-125 (Tardiff Aff. ¶ 28).

[159] Ex. A at VZ00025 (Mills Aff. ¶ 56); *see also* Ex. 15 at VZ00525 (MCI License ¶ 14) ("Owner shall invoice Licensee for the actual cost … upon completion of the Make Ready Work.").

[160] Ex. A at VZ00025 (Mills Aff. ¶ 56); Ex. B at VZ00053-54 (Calnon Aff. ¶ 33).

[161] *See* Ex. A at VZ00025 (Mills Aff. ¶ 56).

territories, meaning Verizon has incurred the cost to replace 660 poles for FirstEnergy when Verizon would have paid for just the 91 pole replacements that Verizon required under the cost causer approach enjoyed by Verizon's competitors.[162] There is thus no competitive difference related to make-ready that justifies a higher rate for Verizon.

47. *Fourth*, FirstEnergy claims Verizon is advantaged when it attaches to FirstEnergy's poles because Verizon is not contractually required to affix a tag that identifies its facilities and can also attach to FirstEnergy's multi-ground neutrals, guys, and anchors.[163] These are not differences that give Verizon a net advantage over its competitors. It is a Verizon company policy to tag its facilities,[164] so Verizon incurs comparable tagging costs to its competitors even if they are not contractually imposed.[165] It is not clear why Verizon's competitors would not also be connected to FirstEnergy's multi-ground neutral since their "interconnection … with the Electric Company's neutral" must also be "desirable as part of the inductive and protective measures required" to share use of poles with an electric utility.[166] And, in situations in which a guy or anchor is required, Verizon also is not advantaged. Under FirstEnergy's license agreements, FirstEnergy has agreed to "itself provide such guying or

[162] *Id.* at VZ00025-27 (Mills Aff. ¶¶ 57-61).

[163] Ex. 29 at VZ00690 (Email from D. Karafa, FirstEnergy, to B. Trosper, Verizon (June 7, 2018)) (alleging that "Verizon need not affix identification tags as do Verizon's competitors," that "Verizon can attach to FirstEnergy's multi-ground neutrals, unlike Verizon's competitors," and that "Verizon can attach to FirstEnergy's guys and anchors, unlike Verizon's competitors").

[164] Ex. A at VZ00025-28 (Mills Aff. ¶ 62).

[165] In addition, FirstEnergy has not included a contractual tagging requirement in all of its license agreements. *See* Ex. 14 (Bell License).

[166] *See, e.g.*, Ex. 12 at VZ00476 (Penn Power JUA, Art. XIV).

bracing" for its licensee[167] and has granted "the nonexclusive right to attach to [its] anchors."[168] But unlike the license agreements, Verizon has agreed to let FirstEnergy attach to Verizon's guys and anchors as well—further eliminating any suggestion of a "net" competitive benefit to Verizon.[169]

48. *Fifth*, FirstEnergy claims Verizon is guaranteed more space on each pole than is guaranteed Verizon's competitors.[170] But the joint use agreements do not *guarantee* space to Verizon (although they do guarantee space to FirstEnergy due to the nature of its facilities)[171] and cannot *guarantee* space to Verizon given the statutory right of access provided to Verizon's competitors.[172] At most, certain of the joint use agreements designate three feet of space as "communications space" and expressly allow FirstEnergy and third parties to attach within that space.[173] The joint use agreements with Penelec even include a graphic that shows that Verizon must pay for the entire communications space on Penelec's poles as though third-party attachers

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[167] Ex. 14 at VZ00509 (Bell License, Art. VI).

[168] Ex. 15 at VZ00519 (MCI License ¶ 2).

[169] *See, e.g.*, Ex. 2 at VZ00190 (Met-Ed-Bethel JUA, Art. VII); *see also* Ex. C at VZ00122-125 (Tardiff Aff. ¶ 28).

[170] Ex. 29 at VZ00690 (Email from D. Karafa, FirstEnergy, to B. Trosper, Verizon (June 7, 2018)) (alleging that "Verizon is guaranteed a number of feet on each pole").

[171] *See* Ex. A at VZ00028-29 (Mills Aff. ¶ 63).

[172] *See* 47 U.S.C. § 224(f); *see also In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 16053 (¶ 1170) (1996) ("Permitting an incumbent LEC, for example, to reserve space for local exchange service, to the detriment of a would-be entrant into the local exchange business, would favor the future needs of the incumbent LEC over the current needs of the new LEC. Section 224(f)(1) prohibits such discrimination among telecommunications carriers.").

[173] *See, e.g.*, Ex. 7 at VZ00322, VZ00328 (Penelec-Bell JUA, Arts. II, XIII); Ex. 12 at VZ00474 (Penn Power JUA, Art. IX(A)-(B)). The Met-Ed joint use agreements, like FirstEnergy's license agreements, do not include space allocations. *See, e.g.*, Ex. 1 (Met-Ed-Bell JUA) & Ex. 14 (Bell License).

are not also attached.[174] But FirstEnergy has rented segments of the communications space to Verizon's competitors, collecting additional rent from them without offset to Verizon.[175] Thus, the mere fact that certain of the joint use agreements designate three feet of space as "communications space" does not advantage Verizon.[176] Verizon does not want, require, or occupy three feet of space on FirstEnergy's poles.[177] Verizon and its competitors now deploy similarly-sized lightweight copper and fiber optic cables that occupy comparable space on FirstEnergy's poles.[178] Verizon is not advantaged.

49. *Sixth*, FirstEnergy claims Verizon is advantaged because its facilities are placed at the lowest location on FirstEnergy's poles.[179] In fact, Verizon's location on FirstEnergy's poles increases its costs and sets it at a competitive disadvantage. Its facilities have the highest exposure to damage from oversized vehicles, vandalism, and similar hazards.[180] Verizon's facilities also suffer more harm from those that work above.[181] It has experienced damage from gaffs, ladders, and bucket trucks, has had holes poked in its cables, and has had support wires broken because of its lowest location on the pole.[182] Verizon also receives more requests to raise

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[174] *See, e.g.*, Ex. 7 at VZ00330 (Penelec-Bell JUA, Art. XVI).

[175] Ex. A at VZ00028-29 (Mills Aff. ¶ 63).

[176] The Met-Ed joint use agreements do not include space allocations. *See, e.g.*, Ex. 1 (Met-Ed-Bell JUA).

[177] Ex. A at VZ00029 (Mills Aff. ¶ 64).

[178] *Id.*

[179] Ex. 29 at VZ00690 (Email from D. Karafa, FirstEnergy, to B. Trosper, Verizon (June 7, 2018)) (alleging that "Verizon gets lowest attachment height which is easier to access" and that "because Verizon gets the lowest position on the pole, it benefits from one additional attachment (*i.e*. 2 attachments in first 12" of space)").

[180] Ex. A at VZ00030 (Mills Aff. ¶ 66).

[181] *Id.*

[182] *Id.*

its cables to accommodate oversize loads that exceed standard vertical clearance requirements.[183] And Verizon incurs increased pole transfer costs because it must be the last company to transfer its facilities to a replacement pole.[184] Verizon often makes more than one trip to the replacement pole because others have not completed their transfers as scheduled.[185]

50. The increased costs associated with Verizon's lowest pole position are not offset by any alleged benefit from "easier … access."[186] There is little measurable difference between the time and effort required to work at the lowest location on a pole and at the location just above.[187] The same safety measures and preparation are required.[188] Nor are the increased costs offset by Verizon's ability to make "2 attachments in first 12 [inches] of space."[189] Verizon's competitors are also presumed to occupy 12 inches of space,[190] and FirstEnergy has not explained why two attachments could not also be located within 12 inches of space located higher on the pole. Nor could it, as FirstEnergy included a photograph in its Field Reference Guide depicting two non-ILEC attachments within 12 inches of space.[191] And even if there were some minimal benefit to Verizon from its location, it is offset by the benefit enjoyed by Verizon's competitors because Verizon is lowest on the pole. Verizon's location is the result of

[183] *Id.* at VZ00030 (Mills Aff. ¶ 67).

[184] *Id.* at VZ00030-31 (Mills Aff. ¶ 68).

[185] *Id.*

[186] Ex. 29 at VZ00690 (Email from D. Karafa, FirstEnergy, to B. Trosper, Verizon (June 7, 2018)).

[187] *See* Ex. A at VZ00031 (Mills Aff. ¶ 69).

[188] *Id.*

[189] Ex. 29 at VZ00690 (Email from D. Karafa, FirstEnergy, to B. Trosper, Verizon (June 7, 2018)).

[190] 47 C.F.R. § 1.1410.

[191] Ex. 30 at VZ00695 (FirstEnergy Field Reference Guide).

standard construction practices that pre-date third-party attachers.[192] Maintaining that pole location eliminates ambiguity about the ownership of particular facilities on the pole and ensures that communications facilities do not crisscross mid-span.[193] It does not justify charging Verizon a higher rate than its competitors.

51. *Seventh*, FirstEnergy relies on wholly avoidable fees it may try to charge some of Verizon's competitors for unauthorized attachments and safety violations.[194] It has no right to impose safety violation fees under the license agreements Verizon has reviewed,[195] and FirstEnergy's draft license agreement clarifies Verizon's competitors [redacted].[196] Verizon's competitors may also avoid unauthorized attachment fees, either by properly reporting their attachments in the first instance or by correcting the violation within six months of notification.[197] There is, therefore, no reason to charge Verizon a higher rate based on fees that its competitors should never pay.

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[192] *See* Ex. A at VZ00031 (Mills Aff. ¶ 69).

[193] *Id.*

[194] Ex. 29 at VZ00690 (Email from D. Karafa, FirstEnergy, to B. Trosper, Verizon (June 7, 2018)) (alleging that "Verizon is not subject to unauthorized attachment penalties as are Verizon's competitors" and that "Verizon is not subject to safety violation penalties as are Verizon's competitors").

[195] *See* Ex. 14 (Bell License) & Ex. 15 (MCI License).

[196] *See* Ex. 13 at VZ00492-493 (Draft License [redacted])

[197] *See Pole Attachment Order*, 26 FCC Rcd at 5291 (¶ 115) (holding that an unauthorized attachment fee provision is presumptively reasonable if it includes "[a]n opportunity for attachers to avoid sanctions by submitting plans of correction within 60 calendar days of receipt of notification of a violation or by correcting the violation and providing notice of the correction to the owner within 180 calendar days of receipt of notification of the violation.").

52. *Eighth*, FirstEnergy claims Verizon is advantaged by more favorable insurance and indemnification provisions than apply to Verizon's competitors.[198] But Verizon has the insurance FirstEnergy's draft license agreement requests[199] and is subject to indemnification provisions that, like those in FirstEnergy's license agreements, assign liability based on fault.[200] But even if there were some difference between the joint use agreement and license agreement provisions, it would not justify an increase to Verizon's rental rate. Only the joint use agreement provisions are reciprocal: unlike its competitors, Verizon must extend to FirstEnergy the same insurance and indemnification provisions for its use of Verizon's poles.[201] These additional obligations must be "weigh[ed], and account[ed] for" in the analysis of competitive neutrality.[202] When they are, the reciprocal provisions cannot provide Verizon a net material benefit that warrants a higher rental rate.[203]

53. *Ninth*, FirstEnergy argues Verizon is not required to post a security bond as its competitors must.[204] But [redacted] and at least one executed license agreement

[198] Ex. 29 at VZ00690 (Email from D. Karafa, FirstEnergy, to B. Trosper, Verizon (June 7, 2018)) (alleging that "[i]nsurance provisions are less burdensome for Verizon than for Verizon's competitors" and that "[i]ndemnification provisions are more favorable to Verizon, saving Verizon millions in out of court settlements over its competitors").

[199] *See* Ex. A at VZ00031-32 (Mills Aff. ¶ 71); *see also* Ex. 13 at VZ00496 (Draft License [redacted]).

[200] *See, e.g.*, Ex. 1 at VZ00176 (Met-Ed-Bell JUA, Art. XIII); Ex. 9 at VZ00377 (Penelec-General JUA, Art. XII); Ex. 14 at VZ00510 (Bell License, Art. VII); Ex. 15 at VZ00526 (MCI License ¶ 19).

[201] *See* Ex. A at VZ00031-32 (Mills Aff. ¶ 71).

[202] *Pole Attachment Order*, 26 FCC Rcd at 5335 (¶ 216 n.654).

[203] *See, e.g.*, Ex. C at VZ00122-125 (Tardiff Aff. ¶ 28).

[204] Ex. 29 at VZ00690 (Email from D. Karafa, FirstEnergy, to B. Trosper, Verizon (June 7, 2018)) (alleging that "Verizon need not post bonds or other security, as must Verizon's competitors").

do not include a security bond requirement.[205] And even if FirstEnergy imposes a security bond requirement on some of Verizon's competitors, it would still not provide Verizon a "net advantage" relative to its competitors because the treatment of security bonds in the joint use agreements is reciprocal.[206] Since "Verizon is likewise required to extend to [FirstEnergy] under the Joint Use Agreements" the same security bond provision that FirstEnergy extends to Verizon, the "alleged benefit[ ]" cannot increase the rate Verizon pays.[207]

54. *Finally*, FirstEnergy relies on the evergreen provisions in the joint use agreements, noting they give Verizon access to FirstEnergy's poles after the joint use agreements are terminated.[208] This does not advantage Verizon over its competitors, as Verizon's competitors have ongoing and statutorily protected access to FirstEnergy's poles due to their federal right of access.[209] And, regardless, Verizon has provided FirstEnergy the same evergreen protection so it can continue to use Verizon's poles after termination. Thus, the evergreen provisions—which FirstEnergy has misused to try to lock in outdated rentals that provide it an over [redacted] recurring annual premium—are in no way a net competitive benefit provided Verizon.[210]

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[205] *See* [redacted].

[206] *See Pole Attachment Order*, 26 FCC Rcd at 5337 (¶ 218); *see also Third Report and Order*, 33 FCC Rcd at 7768 (¶ 123) (requiring utility to prove that the ILEC "receives *net benefits* under its pole attachment agreement with the utility that materially advantage the incumbent LEC over other telecommunications attachers.") (emphasis added).

[207] *See Dominion Order*, 32 FCC Rcd at 3760 (¶ 21).

[208] Ex. 29 at VZ00690 (Email from D. Karafa, FirstEnergy, to B. Trosper, Verizon (June 7, 2018)) (alleging that "[e]vergreen provisions in our joint use agreements mean Verizon cannot be removed from FirstEnergy poles even if the contract is terminated, unlike Verizon's competitors.").

[209] 47 U.S.C. § 224(f).

[210] *See, e.g.*, Ex. B at VZ00051 (Calnon Aff. ¶ 29); Ex. C at VZ00122-125 (Tardiff Aff. ¶ 28).

B. The Commission Should Set Verizon's Just and Reasonable Rate at the New Telecom Level and Refund Verizon's Overpayments.

55. Verizon is "entitled to pole attachment rates, terms and conditions that are just and reasonable pursuant to Section 224(b)(1)" as of the July 12, 2011 effective date of the *Pole Attachment Order*.[211] Here, that just and reasonable rate should be the new telecom rate, which will start to set Verizon on par with its comparable competitors if FirstEnergy is ordered to refund the over [redacted] in net rent that Verizon has overpaid to date in Pennsylvania "plus interest, consistent with the applicable statute of limitations."[212] But even if the Commission determines Verizon is not entitled to the new telecom rate, the just and reasonable rate cannot exceed the pre-existing telecom rate, which also would require a refund of over [redacted] in net rent overpaid by Verizon to date during the applicable statute of limitations in Pennsylvania.[213]

56. State law provides the applicable statute of limitations for violations of Section 224 because the Commission decided to treat claims that a pole attachment agreement's rates, terms, and conditions are "unjust and unreasonable" consistently "with the way that claims for monetary recovery are generally treated under the law."[214] This follows from a long line of

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[211] *See FPL Order*, 30 FCC Rcd at 1141 (¶ 5 n.9) (quoting *Pole Attachment Order*, 26 FCC Rcd at 5331 (¶ 209)).

[212] 47 C.F.R. § 1.1407(a)(3); Ex. B at VZ00047, VZ00050-51 (Calnon Aff. ¶¶ 23, 28) (calculating overpayment of [redacted] to date within the applicable Pennsylvania statute of limitations period as compared to proportional new telecom rates).

[213] Ex. B at VZ00056-57 (Calnon Aff. ¶¶ 38-40) (calculating overpayment of [redacted] to date within the applicable Pennsylvania statute of limitations period as compared to proportional pre-existing telecom rate).

[214] *See Pole Attachment Order*, 26 FCC Rcd at 5289-90 (¶¶ 110-12); *see also In the Matter of Implementation of Section 224 of the Act; A Nat'l Broadband Plan for Our Future*, 25 FCC Rcd 11864, 11902 (¶ 88) (2010) ("Generally speaking, a plaintiff is entitled to recompense going

precedent that "[w]hen there is no statute of limitations expressly applicable to a federal statute, …. 'the general rule is that a state limitations period for an analogous cause of action is borrowed and applied to the federal claim.'"[215] And where, as here, the federal claim involves a contract, "contract law provides the best analogy" and the court should "adopt the general contract law statute of limitations."[216] Thus, in the *Dominion Order*, the Enforcement Bureau cited the parties' agreement to the applicability of a five-year statute of limitations for actions involving a Virginia contract.[217]

57. The applicable statute of limitations in Pennsylvania permits recovery back to the July 12, 2011 effective date of the *Pole Attachment Order*.[218] The traditional statute of limitations for contract actions in Pennsylvania is four years.[219] But Pennsylvania adheres to the continuing contract doctrine for contracts that, like the joint use agreements, do not have a fixed termination date.[220] Under the continuing contract doctrine, damages are available for the time

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back as far as the applicable statute of limitations allows. There does not appear to be a justification for treating pole attachment disputes differently.").

[215] *Hoang v. Bank of Am., N.A.*, 910 F.3d 1096, 1101 (9th Cir. 2018) (quoting *Cty. of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 240 (1985)). *See also Spiegler v. District of Columbia*, 866 F.2d 461, 463-64 (D.C. Cir. 1989) ("When Congress has not established a statute of limitations for a federal cause of action, it is well-settled that federal courts may 'borrow' one from an analogous state cause of action, provided that the state limitations period is not inconsistent with underlying federal policies.").

[216] *Hoang*, 910 F.3d at 1101. Moreover, the Commission could have, but did not, specify a one-size-fits-all federal statute of limitations, further reinforcing that the "applicable statute of limitations" is drawn from state law.

[217] *See Dominion Order*, 32 FCC Rcd at 3764 (¶ 28 n.104) (citing Va. Code § 8.01-246(2)).

[218] *See id.* at 3764 (¶ 28) (stating that "refunds [may] extend back as far as the applicable statute of limitations allows, but no earlier than the *Pole Attachment Order* effective date").

[219] *See* 42 Pa. Cons. Stat. § 5525.

[220] *See Beltz v. Erie Indem. Co.*, 279 F. Supp. 3d 569, 578-80 (W.D. Pa. 2017), *aff'd*, 733 F. App'x 595 (3d Cir. 2018) (applying Pennsylvania contract law); *see also Thorpe v. Schoenbrun*, 195 A.2d 870 (Pa. Super. Ct. 1963) ("If services are rendered under an agreement which does not

period covered by the continuing contract, plus a four-year period following termination of the contract.[221] Thus, all time periods since the July 12, 2011 effective date of the *Pole Attachment Order* are covered by the applicable statute of limitations in Pennsylvania.

58. A refund of the amounts that Verizon has overpaid since July 12, 2011 will be consistent with the Commission's intention that "monetary recovery in a pole attachment action extend as far back in time as the applicable statute of limitations allows."[222] Any other result "discourages pre-complaint negotiations between the parties," "fails to make injured attachers whole, and is inconsistent with the way that claims for monetary recovery are generally treated under the law."[223] And here, Verizon should be made as whole as possible. It has paid FirstEnergy unjust and unreasonable rates for years while FirstEnergy thwarted Verizon's efforts—which began before the *Pole Attachment Order*'s July 12, 2011 effective date—to reduce Verizon's annual pole attachment rent.[224]

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fix any certain time for payment or for the termination of the services, the contract will be treated as continuous, and the statute of limitations does not begin to run until the termination of the contractual relationship between the parties.") (internal quotation omitted).

[221] *See Beltz*, 279 F. Supp. 3d at 578-80. The continuing contract doctrine thus extends the period covered by the traditional breach of contract statute of limitations, which accrues as of the date of the breach. *See id.* at 578.

[222] *Pole Attachment Order*, 26 FCC Rcd at 5290 (¶ 112).

[223] *Id.* at 5289 (¶ 110).

[224] *See* Ex. A at VZ00014-21 (Mills Aff. ¶¶ 30-47). During the applicable statute of limitations period, when FirstEnergy charged Verizon effective rates ranging from [redacted] per pole, Verizon charged CLECs and cable companies rates that ranged from [redacted] per pole. *See id.* at VZ00006 (Mills Aff. ¶ 11); *see also FPL Order*, 30 FCC Rcd at 1150 (¶ 25 n.84) (requesting "evidence as to the rate Verizon charges cable companies and competitive LECs to attach to its poles").

59. The new telecom rates for Verizon should be properly calculated using the Commission's presumptive inputs.[225] Although FirstEnergy has asserted it can charge new telecom rates that are higher than the rates that Verizon seeks,[226] FirstEnergy has not provided evidence that would rebut the Commission's presumptions, and Verizon is not aware of any that exists.[227] The Commission should thus find the "just and reasonable" rate for Verizon is the per-pole new telecom rate that results from a proper application of the Commission's rate formulas.[228] By enforcing Verizon's right to this just and reasonable rate, the Commission will advance its deployment goals by eliminating outdated rate disparities and creating a more competitive market for deployment of broadband and other advanced services.

IV. COUNT I – UNJUST AND UNREASONABLE RATES

60. Verizon incorporates paragraphs 1 through 59 of this complaint as if set forth fully herein.

61. The Commission has authority to "regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions."[229]

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[225] *See* 47 C.F.R. § 1.1413(b) ("[T]here is a presumption that incumbent local exchange carriers … may be charged no higher than the rate determined in accordance with § 1.1406(e)(2)."); *see also* Ex. C at VZ00110-114 (Tardiff Aff. ¶¶ 10-14).

[226] *See, e.g.*, Ex. 28 at VZ00652-687 (Attachments to Email from S. Shafer, FirstEnergy, to J. Slavin, Verizon (May 11, 2018)).

[227] *See* Ex. A at VZ00016 (Mills Aff. ¶ 35); Ex. B at VZ00037-38 (Calnon ¶¶ 8-9).

[228] *See* Ex. B at VZ00041-42 (Calnon Aff. ¶¶ 13-14); Ex. C at VZ00107, VZ00110-114 (Tardiff Aff. ¶¶ 5, 10-14).

[229] 47 U.S.C. § 224(b)(1).

62. A properly calculated new telecom rate is the just and reasonable rate for Verizon's use of FirstEnergy's poles under the presumption adopted in the 2018 *Third Report and Order* and under the principle of competitive neutrality adopted in the 2011 *Pole Attachment Order*. During the applicable statute of limitations, the properly calculated new telecom rates for Verizon's use of FirstEnergy's poles are:

- $8.29, $9.87, $10.07, $5.02, $9.35, $8.79, $9.55, $12.20, and $13.83 per pole for Verizon's use of Met-Ed's poles during the 2011 to 2019 rental years;
- $6.43, $6.79, $7.18, $5.21, $6.96, $7.18, $7.49, $10.49, and $9.07 per pole for Verizon's use of Penelec's poles during the 2011 to 2019 rental years; and
- $7.30, $8.47, $8.51, $8.21, $8.94, $9.40, $9.08, $11.18, and $11.80 per pole for Verizon's use of Penn Power's poles during the 2011 to 2019 rental years.[230]

FirstEnergy's refusal to charge Verizon a rental rate properly calculated under the FCC's new telecom formula has denied Verizon a just and reasonable rate in violation of 47 U.S.C. § 224 and the Commission's implementing regulations and orders and has taken over [redacted] from Verizon to date in violation of federal law.[231]

63. Alternatively, if FirstEnergy shows that Verizon attaches to FirstEnergy's poles on terms and conditions that provide it a net material advantage as compared to other telecommunications attachers, the just and reasonable rate for Verizon's use of FirstEnergy's poles is no higher than the properly calculated pre-existing telecom rate.[232] During the

[230] Ex. B at VZ00041-42 (Calnon Aff. ¶¶ 13-14).

[231] *Id.* at VZ00037-38 (Calnon Aff. ¶ 8) (calculating overpayment of [redacted] to date within the applicable Pennsylvania statute of limitations period as compared to proportional new telecom rates).

[232] *See Third Report and Order*, 33 FCC Rcd at 7771 (¶ 129); *see also Pole Attachment Order*, 26 FCC Rcd at 5336-37 (¶ 218).

applicable statute of limitations, the properly calculated pre-existing telecom rates for Verizon's use of FirstEnergy's poles are:

- $12.57, $14.96, $15.26, $7.61, $14.16, $13.32, $14.47, $18.49, and $20.96 per pole for Verizon's use of Met-Ed's poles during the 2011 to 2019 rental years;
- $9.74, $10.29, $10.89, $7.89, $10.54, $10.88, $11.35, $15.90, and $13.75 per pole for Verizon's use of Penelec's poles during the 2011 to 2019 rental years; and
- $11.06, $12.83, $12.90, $12.44, $13.54, $14.24, $13.75, $16.94, and $17.88 per pole for Verizon's use of Penn Power's poles during the 2011 to 2019 rental years.[233]

Under these alternative circumstances, FirstEnergy's refusal to offer Verizon a rental rate that is not higher than the rate properly calculated under the FCC's pre-existing telecom formula has denied Verizon a just and reasonable rate in violation of 47 U.S.C. § 224 and the Commission's implementing regulations and orders and has taken over [redacted] from Verizon to date in violation of federal law.[234]

V. RELIEF REQUESTED

64. Verizon respectfully requests that the Commission order that the unjust and unreasonable rate provision in the parties' Joint Use Agreement, as amended, is terminated consistent with the applicable statute of limitations.

65. Verizon respectfully requests that the Commission prescribe the rate that is properly calculated in accordance with the Commission's new telecom formula as the just and reasonable rate in a new agreement that applies to Verizon's existing and future attachments.

66. Alternatively, if the Commission concludes that FirstEnergy has shown that the terms and conditions of the parties' joint use agreements provide Verizon a net material

[233] Ex. B at VZ00055 (Calnon Aff. ¶ 36).

[234] *Id.* at VZ00056 (Calnon Aff. ¶ 40) (calculating overpayment of [redacted] to date within the applicable Pennsylvania statute of limitations period as compared to proportional pre-existing telecom rates).

advantage relative to its competitors, then Verizon requests that the Commission prescribe as the just and reasonable rate a rate no higher than the rate properly calculated in accordance with the Commission's pre-existing telecom formula.

67. Verizon respectfully requests that the Commission order FirstEnergy to refund all amounts paid in excess of a just and reasonable rate during the applicable statute of limitations period and grant Verizon such other relief as the Commission deems just, reasonable, and proper.

Respectfully submitted,

By: _____

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Attorneys for Verizon Pennsylvania LLC and Verizon North LLC

Dated: November 20, 2019

INFORMATION DESIGNATION

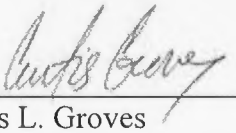
1. The Verizon employees and former employees with relevant information about this rental rate dispute are identified in this Pole Attachment Complaint and its supporting Affidavits and Exhibits.

2. The Joint Use Agreements and certain correspondence exchanged by the parties during the rental rate negotiations are attached as Exhibits to this Pole Attachment Complaint. Also attached are Affidavits from individuals who were involved in or supported the rate negotiations, calculations of the rental rates that result from the Commission's new and pre-existing telecom rate formulas, and calculations of the amounts that FirstEnergy has collected in violation of 47 U.S.C. § 224(b), along with an Affidavit from Timothy J. Tardiff, Ph.D. Additional correspondence exchanged by the parties during the rate negotiations is within FirstEnergy's possession.

3. Should FirstEnergy seek to rebut the new telecom rate presumption, additional information will become relevant. Verizon previously sought to obtain some of this information from FirstEnergy, such as a complete set of unredacted license agreements and the support and quantification of the value associated with any competitive "benefit" that FirstEnergy relies on as support for the rates that it has charged Verizon. Verizon again seeks this information in interrogatories being served contemporaneously with this Pole Attachment Complaint. Verizon reserves the right to rely on information that is not appended to this Pole Attachment Complaint if it is provided by FirstEnergy or becomes relevant.

RULE 1.721(M) VERIFICATION

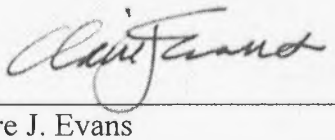
I, Curtis L. Groves, as signatory to this submission, hereby verify that I have read this Pole Attachment Complaint and, to the best of my knowledge, information, and belief formed after reasonably inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of the proceeding.



Curtis L. Groves

DECLARATION OF PAYMENT

I, Claire J. Evans, counsel for Complainants Verizon Pennsylvania LLC and Verizon North LLC, hereby declare, under penalty of perjury, that Complainants paid the $1,770 filing fee electronically using the Commission's electronic filing and payment system "Fee Filer" (www.fcc.gov/feefiler) on November 20, 2019, as required by Section 1.1106 of the Commission's Rules, 47 C.F.R. § 1.1106. Verizon Pennsylvania LLC's 10-digit FCC Registration Number is 0003273505. Verizon North LLC's 10-digit FCC Registration Number is 0020249777.



Claire J. Evans

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2019, I caused a copy of the foregoing Complaint, Affidavits, and Exhibits in support thereof, to be served on the following (service method indicated):

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554
(confidential version of Complaint, Affidavits, and Exhibits by hand delivery; public version of Complaint, Affidavits, and Exhibits by ECFS)

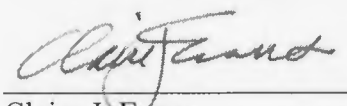
Kimberly D. Bose, Secretary
Nathaniel J. Davis, Sr., Deputy Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426
(public version of Complaint, Affidavits, and Exhibits by overnight delivery)

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
Secretary's Bureau, 2nd Fl, Room-N201
400 North Street
Harrisburg, PA 17120
(public version of Complaint, Affidavits, and Exhibits by overnight delivery)

Metropolitan Edison Company
c/o CT Corporation System
600 North 2nd Street
Suite 401
Harrisburg, PA 17101
(confidential and public versions of Complaint, Affidavits, and Exhibits by hand delivery)

Pennsylvania Electric Company
c/o CT Corporation System
600 North 2nd Street
Suite 401
Harrisburg, PA 17101
(confidential and public versions of Complaint, Affidavits, and Exhibits by hand delivery)

Penn Power Company
c/o CT Corporation System
600 North 2nd Street
Suite 401
Harrisburg, PA 17101
(confidential and public versions of Complaint, Affidavits, and Exhibits by hand delivery)



Claire J. Evans

Before the
Federal Communications Commission
Washington, DC 20554

VERIZON PENNSYLVANIA LLC and VERIZON NORTH LLC, Complainants, v. METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, and PENN POWER COMPANY, Defendants.	Proceeding No. 19-___ Bureau ID No. EB-19-MD-___

Affidavits

A. Affidavit of Stephen C. Mills (Nov. 19, 2019).

B. Affidavit of Mark S. Calnon, Ph.D. (Nov. 19, 2019).

C. Affidavit of Timothy J. Tardiff, Ph.D. (Nov. 19, 2019).

Exhibits

1. Agreement between Metropolitan Edison Company ("Met-Ed") and The Bell Telephone Company of Pennsylvania (1973), as supplemented in 1983 ("Met-Ed-Bell JUA").

2. Agreement between Met-Ed and Bethel & Mt. Aetna Telephone and Telegraph Company (1968), as amended in 1974 ("Met-Ed-Bethel JUA").

3. Agreement between Met-Ed and Continental Telephone Company of Pennsylvania (1972), as amended in 1972 ("Met-Ed-Contel JUA").

4. Agreement between Met-Ed and Quaker State Telephone Company (1971) ("Met-Ed-Quaker JUA").

5. Agreement between Met-Ed and York Telephone and Telegraph Company (1967), as amended in 1974 and 1975 ("Met-Ed-York JUA").

6. Memoranda of Understanding between Met-Ed and Verizon for Agreements 11001, 11002, 11007, 11008, 11011 (2009) ("Met-Ed MOUs").

7. Agreement between Pennsylvania Electric Company ("Penelec") and Bell Telephone Company of Pennsylvania (1986) ("Penelec-Bell JUA").

8. Agreement between Penelec and Continental Telephone Company of Pennsylvania (1988) ("Penelec-Contel JUA").

9. Agreement between Penelec and General Telephone Company of Pennsylvania (1958), as supplemented in 1966 ("Penelec-General JUA").

10. Agreement between Penelec and Quaker State Telephone Company (1988) ("Penelec-Quaker JUA").

11. Memoranda of Understanding between Penelec and Verizon for Agreements 21001, 21005, 21010, 21011, 21022, 21025 (2009) ("Penelec MOUs").

12. Agreement between Penn Power Company and The Bell Telephone Company of Pennsylvania (1978), as amended in 1999 ("Penn Power JUA").

13. Draft Pole Attachment Agreement Between Met-Ed and Attaching Company Name (provided July 21, 2017) ("Draft License").

14. Attachment Agreement Between Met-Ed and Penelec, as "Owner," and Bell Atlantic-Pennsylvania, as "Licensee" (Sept. 25, 1988) ("Bell License").

15. Telecommunication Pole and Anchor Attachment License Agreement Between Potomac Edison et al., as "Owner," and MCI Communications Services, Inc., as "Licensee" (Aug. 1, 2009) ("MCI License").

16. Pole Attachment Rental Invoices.

17. Letter from W. Balcerski, Verizon to M. Wolfe, FirstEnergy (Apr. 30, 2012).

18. Email from N. Parrish, Verizon to S. Schafer, FirstEnergy (Aug. 17, 2012).

19. Email from N. Parrish, Verizon to L. Chapman, FirstEnergy (Sept. 10, 2012).

20. Letter from T. Magee, Counsel for FirstEnergy, to W. Balcerski, Verizon (Jan. 25, 2013).

21. Email from D. DeWitt, FirstEnergy to S. Mills, Verizon (Apr. 12, 2017).

22. Email from S. Mills, Verizon to S. Schafer and D. DeWitt, FirstEnergy (July 7, 2017).

23. Email from D. DeWitt, FirstEnergy to S. Mills, Verizon (July 21, 2017) (attachment omitted, but attached to Pole Attachment Complaint as Exhibit 13).

24. Email from D. DeWitt, FirstEnergy to S. Mills, Verizon (Aug. 11, 2017).

25. Letter from S. Mills, Verizon to D. DeWitt, FirstEnergy (Nov. 2, 2017).

26. Letter from D. DeWitt, FirstEnergy to S. Mills, Verizon (Dec. 20, 2017).

27. Letter from B. Trosper, Verizon to S. Strah, FirstEnergy (Dec. 20, 2017).

28. Email from S. Schafer, FirstEnergy to S. Mills, Verizon (May 11, 2018).

29. Email from D. Karafa, FirstEnergy to B. Trosper, Verizon (June 7, 2018).

Internet Materials

30. Field Reference Guide Joint Use – FirstEnergy Operating Company (FEOC) Joint Use Complete Application Requirements (May 20, 2019), *available at* https://www.firstenergycorp.com/content/dam/customer/get-help/files/joint-use-policies/application-requirements.pdf (last visited Nov. 18, 2019).

31. Excerpt from FirstEnergy 2018 Annual Report (Mar. 11, 2019)), *available at* https://www.firstenergycorp.com/content/dam/investor/files/annual-reports/2018.pdf (last visited Nov. 18, 2019).

32. Excerpt from Met-Ed Electric Generation Supplier Coordination Tariff (Apr. 17, 2019), *available at* https://www.firstenergycorp.com/content/dam/customer/Customer%20Choice/Files/PA/tariffs/Met-Ed-Tariff-10-6-1-19.pdf (last visited Nov. 18, 2019).

33. Excerpt from Penelec Electric Generation Supplier Coordination Tariff (Apr. 17, 2019), *available at* https://www.firstenergycorp.com/content/dam/customer/Customer%20Choice/Files/PA/tariffs/Penelec-Tariff-Supp-10-6-1-19.pdf (last visited Nov. 18, 2019).

34. Excerpt from Penn Power Electric Generation Supplier Coordination Tariff (Apr. 17, 2019), *available at* https://www.firstenergycorp.com/content/dam/customer/Customer%20Choice/Files/PA/tariffs/PennPower-Tariff-10-6-1-19.pdf (last visited Nov. 18, 2019).

35. Excerpt from FirstEnergy 2018 Form 10-K (Feb. 19, 2019), *available at* https://investors.firstenergycorp.com/Cache/396797408.pdf (last visited Nov. 18, 2019).

State Orders and Filings

36. Excerpt from Opinion and Order, Docket Nos. R-00061366, R-00061367 (Pa. PUC Jan. 11, 2007) (applicable to Met-Ed and Penelec).

37. Excerpt from Opinion and Order, Docket No. R-870732, 1998 Pa. PUC LEXIS 407 (Pa. PUC May 3, 1988) (applicable to Penn Power).

38. Excerpt from Direct Testimony of S. Staub, Docket Nos. R-2014-2428745, R-2014-2428743, R-2014-2428744 (Pa. PUC Aug. 4, 2014) (applicable to Met-Ed, Penelec, and Penn Power).

39. Excerpt from Report on Quarterly Earnings (Pa. PUC Bureau of Tech. Util. Servs. June 30, 2015) (applicable to Met-Ed, Penelec, and Penn Power).

40. Excerpt from Direct Testimony of J. Dipre, Docket No. R-2016-2537349 (Pa. PUC Apr. 28, 2016) (applicable to Met-Ed).

41. Excerpt from Direct Testimony of J. Dipre, p. 4, Docket No. R-2016-2537352 (Pa. PUC Apr. 28, 2016) (applicable to Penelec).

42. Excerpt from Direct Testimony of J. Dipre, p. 4, Docket No. R-2016-2537355 (Pa. PUC Apr. 28, 2016) (applicable to Penn Power).

43. Excerpt from Report on Quarterly Earnings (Pa. PUC Bureau of Tech. Util. Servs. June 30, 2017) (applicable to Met-Ed, Penelec, and Penn Power).

Exhibit A

Before the
Federal Communications Commission
Washington, DC 20554

VERIZON PENNSYLVANIA LLC and VERIZON NORTH LLC, Complainants, v. METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, and PENN POWER COMPANY, Defendants.	Proceeding No. 19-___ Bureau ID No. EB-19-MD-___

AFFIDAVIT OF STEPHEN C. MILLS

COMMONWEALTH OF VIRGINIA)
) ss.
COUNTY OF CULPEPER)

I, STEPHEN C. MILLS, being sworn, depose and say:

1. I am a Consultant – Contract Management in the Wireline Network Operations Division of Verizon Services Corporation. I am executing this Affidavit in support of the Pole Attachment Complaint of Verizon Pennsylvania LLC ("Verizon Pennsylvania") and Verizon North LLC ("Verizon North") (collectively, "Verizon") against the Pennsylvania operating subsidiaries of FirstEnergy Corp. known as Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), and Pennsylvania Power Company ("Penn Power") (collectively, "FirstEnergy"). I am also executing an Affidavit today in support of a related Pole Attachment Complaint that Verizon Maryland LLC is filing against the Maryland operating subsidiary of FirstEnergy Corp. known as The Potomac Edison Company ("Potomac Edison"). I know the following of my own personal knowledge and, if called as a witness in this action, I

could and would testify competently to these facts under oath. I reserve the right to supplement or revise this Affidavit as additional information becomes available.

2. I have a Bachelor of Science in Professional Technology Studies with a concentration in Telecommunications from Pace University. I have worked for Verizon for over 23 years. I began my career working with telecommunications facilities and utility pole infrastructure as an installer and repairman. I then became a cable splicing technician where I worked on the physical placement and connection of telecommunication facilities in both the aerial and buried environment. From there, I was promoted to an engineering assistant where I designed the placement of telecommunication facilities in both the aerial and buried environment. In 2005, I was promoted to my current position. As a Consultant – Contract Management, I am responsible for the negotiation and implementation of joint use agreements and pole attachment agreements in Verizon's service areas in Pennsylvania, Maryland, Delaware, Virginia, and Washington, DC. These include the joint use agreements and amendments with FirstEnergy that are attached to Verizon's Pole Attachment Complaint as Exhibits 1 to 12.

3. I also provide support on issues relating to access to Verizon-owned utility poles and am aware of the terms and conditions that typically apply to competitive local exchange carriers ("CLECs") and cable companies that attach to poles owned by incumbent local exchange carriers ("ILECs") and investor-owned electric utilities. I also have access to information maintained by Verizon's CLEC affiliates in Pennsylvania: MCI Communications Services, Inc., MCImetro Access Transmission Services Corp., and XO Communications Services, LLC.

4. Verizon Pennsylvania and Verizon North are Delaware limited liability companies with a principal place of business at 900 Race Street, Philadelphia, Pennsylvania

19107. Each is an ILEC that provides telecommunications and other services to areas of Pennsylvania.

5. Verizon shares utility poles in Pennsylvania with defendants. Met-Ed's service territory includes parts of southeast Pennsylvania, including (but not limited to) Reading, Berks County, and York County. Penelec's service territory includes parts of central and northern Pennsylvania, including (but not limited to) Erie, Cambria County, and Somerset County. Penn Power's service territory includes parts of western Pennsylvania, including (but not limited to) Lawrence County and Mercer County.

6. Verizon and FirstEnergy are party to ten joint use agreements that have similar terms and conditions and were entered with various Verizon predecessor companies between 1958 and 1988. FirstEnergy charges Verizon pole attachment rent each year using rental rate provisions that were amended between 1999 and 2009. Each of these documents is attached to Verizon's Pole Attachment Complaint as Exhibits 1 through 12. Exhibits 1 through 5 are Verizon's five joint use agreements with Met-Ed, and Exhibit 6 contains the four memoranda of understanding with the current Met-Ed rental rate provision. Exhibits 7 through 10 are Verizon's four joint use agreements with Penelec, and Exhibit 11 contains the four memoranda of understanding with the current Penelec rate provision. Exhibit 12 is Verizon's joint use agreement with Penn Power, with the 1999 letter agreement that has the current Penn Power rate provision.

A. FirstEnergy's Unjust and Unreasonable Rates

7. Each year, FirstEnergy sends Verizon eleven invoices for pole attachment rent—five from Met-Ed, five from Penelec, and one from Penn Power. The invoices from Met-Ed reflect a so-called "deficiency" pole attachment rent methodology, under which Met-Ed charges Verizon an exceptionally high rental rate for a subset of Met-Ed poles, but does not assign itself

any rental amount for its use of Verizon's poles. The invoices from Penelec reflect a so-called "net" pole attachment rent methodology, which charges Verizon for the net rental amount that results when Penelec's rent for use of Verizon's poles is subtracted from Verizon's rent for use of Penelec's poles. The invoice from Penn Power charges Verizon for "gross" pole attachment rent, which is the rental amount for Verizon's use of Penn Power's poles. Verizon, in turn, charges Penn Power for "gross" pole attachment rent, meaning the rental amount for Penn Power's use of Verizon's poles.

8. Copies of FirstEnergy's eleven invoices for 2018 pole attachment rent, and Verizon's invoice to Penn Power for 2018 pole attachment rent, are attached to Verizon's Pole Attachment Complaint as Exhibit 16. Because defendants invoice rent at different times during the year, the 2018 rental year is the most recent rental year that all defendants have invoiced and collected pole attachment rent from Verizon. FirstEnergy's invoices for the 2018 rental year, which are attached to Verizon's Pole Attachment Complaint as Exhibit 16, are representative of the invoices FirstEnergy has sent each year since at least the effective date of the *Pole Attachment Order*.[1]

9. The invoices attached to the pole attachment complaint show that, for the 2018 rental year, Verizon paid FirstEnergy more than [redacted] in pole attachment rent, which reflects both the rental amount FirstEnergy charged Verizon and the amount (if any) that FirstEnergy paid for use of Verizon's poles. The invoices further show that, as of the 2018 rental year, the parties shared 412,697 poles in Pennsylvania, with Verizon owning 110,843 of the

[1] *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 (2011) ("*Pole Attachment Order*").

jointly used poles, or 27 percent, and FirstEnergy owning 301,854 of the jointly used poles, or 73 percent.

10. Verizon made similar net rental payments to FirstEnergy each year since at least the effective date of the *Pole Attachment Order*:

Rental Year	Met-Ed	Penelec	Penn Power	Total
2011	[redacted]	[redacted]	[redacted]	[redacted]
2012	[redacted]	[redacted]	[redacted]	[redacted]
2013	[redacted]	[redacted]	[redacted]	[redacted]
2014	[redacted]	[redacted]	[redacted]	[redacted]
2015	[redacted]	[redacted]	[redacted]	[redacted]
2016	[redacted]	[redacted]	[redacted]	[redacted]
2017	[redacted]	[redacted]	[redacted]	[redacted]
2018	[redacted]	[redacted]	[redacted]	[redacted]
2019	Not yet invoiced		[redacted]	[redacted]

11. These net rental payments were calculated based on rental rates for Verizon that far exceed the rental rates Verizon charged CLECs and cable companies attached to Verizon's poles. For example, for the 2011 to 2018 rental years, when Verizon paid Met-Ed, Penelec, and Penn Power pole attachment rates ranging from [redacted] per pole, Verizon charged CLECs and cable companies pole attachment rates that ranged from [redacted] per pole in Pennsylvania.

12. Additional information about the pole attachment rent Verizon has paid Met-Ed, Penelec, and Penn Power since the effective date of the *Pole Attachment Order* follows.

1) Met-Ed

13. Met-Ed sends Verizon five pole attachment rent invoices each year, with each invoice covering a different section of the joint use network. Met-Ed charges Verizon using the rate methodology in four memoranda of understanding entered in 2009. The methodology

requires Verizon to pay an exceptionally high rental rate on a subset of joint use poles that Met-Ed refers to as "deficiency" poles. This subset of poles reflects the difference between the number of joint use poles Verizon owns and the number of joint use poles Verizon would own if it owned 45 percent of the joint use poles.

14. Met-Ed's current rate provision was adopted when Verizon owned 19 percent of the joint use poles, as evidenced by pole ownership numbers agreed upon in the 2009 memoranda of understanding:

Memorandum of Understanding	Joint Use Poles Owned by Met-Ed	Joint Use Poles Owned by Verizon	Total Joint Use Poles
#11001	[redacted]		
#11002			
#11007			
#11008			
#11011			
Total			
Percent Ownership	**81%**	**19%**	

15. After the rate provision took effect in 2009, Verizon tried for several years to purchase poles so that it would have a 45 percent pole ownership interest in the joint use network. For example, William J. Balcerski, Assistant General Counsel, Verizon, wrote to FirstEnergy's counsel, Michael G. Wolfe, in April 2012 after Verizon had tried for "over two years" to purchase poles from Met-Ed.[2] He again emphasized Verizon's interest in buying 41,633 poles from Met-Ed throughout the parties' joint use network. Norm Parrish, Manager – Network Engineering, Verizon, similarly wrote to Stephen Schafer, Manager, Joint Use & Cable

[2] *See* Compl. Ex. 17 at VZ00550 (Letter from W. Balcerski, Verizon to M. Wolfe, FirstEnergy (Apr. 30, 2012)).

Locating, FirstEnergy, in August 2012 because "Verizon had been requesting to purchase poles from Met-Ed for several years."[3] Notwithstanding these and other requests, Met-Ed refused to sell Verizon poles.

16. Consequently, the pole ownership disparity between the parties has not changed over the last decade. Met-Ed's most recent invoices, which were for the 2018 rental year, show that Met-Ed continues to own 81 percent of the joint use poles:

Invoice 2018 Rental Year	**Joint Use Poles Owned by Met-Ed**	**Joint Use Poles Owned by Verizon**	**Total Joint Use Poles**
#11001	26,834	4,748	31,582
#11002	39,050	10,105	49,155
#11007	776	108	884
#11008	10,897	2,094	12,991
#11011	51,864	12,972	64,836
Total	129,421	30,027	159,448
Percent Ownership	**81%**	**19%**	

17. Verizon, as a result, continues to pay Met-Ed rent under a rate provision that applies an exceptionally high pole attachment rate to an essentially unchangeable number of poles reflecting the difference between the 19 percent of joint use poles Verizon owns and the 45 percent of joint use poles that Met-Ed would not agree to let Verizon own.

18. In my discussions with Met-Ed, we talked about converting this unfair and somewhat complex rate methodology into a more conventional per-pole rate methodology. For example, in an April 2017 email, Deanna DeWitt, Supervisor, Joint Use and Cable Locating,

[3] *See* Compl. Ex. 18 at VZ00554 (Email from N. Parrish, Verizon to S. Schafer, FirstEnergy (Aug. 17, 2012)).

FirstEnergy, emailed me a rate offer that proposed to convert Verizon's 2015 contract rate of [redacted] to reciprocal per-pole [redacted] rates as follows:[4]

2015 Contract Rate Methodology				
	Joint Use Poles Owned	Number of Poles to which Contract Rate Applies	Contract Rate	Rental Amount
Verizon	30,023	41,727	[redacted]	[redacted]
Met-Ed	129,421	0	--	$0
Net Rent Verizon Pays Met-Ed				[redacted]
Proposed Rate Methodology				
	Joint Use Poles Owned	Number of Poles to which Reciprocal Rate Applies	Contract Rate	Rental Amount
Verizon	30,023	129,421	[redacted]	[redacted]
Met-Ed	129,421	30,023	[redacted]	[redacted]
Net Rent Verizon Pays Met-Ed				[redacted]

19. Verizon did not agree to this change because it did not offer Verizon any relief from Met-Ed's unreasonably high rental rates. Under the proposal, Verizon's net rental payment to Met-Ed would have decreased by just $465.

20. Met-Ed's invoices thus continue to charge Verizon for the difference between Verizon's 19 percent pole ownership interest and a 45 percent pole ownership interest in the joint use network. Using the 2018 rental year as an example, Met-Ed charged Verizon more than [redacted] in pole attachment rent across five invoices as follows (with annual net rental amounts rounded to the nearest dollar):

[4] *See* Compl. Ex. 21 at VZ00572 (Email from D. DeWitt, FirstEnergy to S. Mills, Verizon (Apr. 12, 2017)).

Invoice	Total Poles	Met-Ed Poles	Verizon Poles	45% Poles	Difference	Rental Rate	Rent Paid by Verizon
#11001	31,582	26,834	4,748	14,212	9,464	[redacted]	[redacted]
#11002	49,155	39,050	10,105	22,120	12,015	[redacted]	[redacted]
#11007	884	776	108	398	290	[redacted]	[redacted]
#11008	12,991	10,897	2,094	5,846	3,752	[redacted]	[redacted]
#11011	64,836	51,864	12,972	29,176	16,204	[redacted]	[redacted]
Total	**159,448**	**129,421**	**30,027**	**71,752**	**41,725**	[redacted]	[redacted]

21. Met-Ed charged pole attachment rent that was calculated and invoiced in a similar manner for all rental periods following the *Pole Attachment Order*'s 2011 effective date. The following table includes the total rent that Met-Ed invoiced, and Verizon paid, each rental year from 2011 through 2018 (with annual net rental amounts rounded to the nearest dollar):

Rental Year	Total Poles	Met-Ed Poles	Verizon Poles	45% Poles	Difference	Rental Rate	Rent Paid by Verizon
2011	159,321	129,306	30,015	71,692	41,677	[redacted]	[redacted]
2012	159,306	129,288	30,018	71,687	41,668	[redacted]	[redacted]
2013	159,329	129,308	30,021	71,695	41,674	[redacted]	[redacted]
2014	159,345	129,324	30,021	71,705	41,684	[redacted]	[redacted]
2015	159,444	129,421	30,023	71,750	41,727	[redacted]	[redacted]
2016	159,448	129,422	30,026	71,752	41,726	[redacted]	[redacted]
2017	159,448	129,422	30,026	71,752	41,726	[redacted]	[redacted]
2018	159,448	129,421	30,027	71,752	41,725	[redacted]	[redacted]

2) Penelec

22. Like Met-Ed, Penelec sends Verizon five invoices each year, with each invoice covering a different section of the joint use network. Penelec charges Verizon using a per-pole rate methodology contained in four 2009 memoranda of understanding. Each year, Penelec charges Verizon a higher per-pole rate to attach to Penelec's poles than Penelec pays to attach to Verizon's poles, even though Penelec requires far more space on a pole than Verizon requires.

23. Penelec's current rate methodology was adopted when Penelec owned two-thirds of the joint use poles, as evidenced by pole ownership numbers agreed upon in the 2009 memoranda of understanding:

Memorandum of Understanding	Joint Use Poles Owned by Penelec	Joint Use Poles Owned by Verizon	Total Joint Use Poles
#21001	[redacted]		
#21005			
#21010			
#21011			
#21022			
#21025			
Total			
Percent Ownership	**67%**	**33%**	

24. This pole ownership disparity has not materially changed over the last decade. Penelec's most recent invoices, which were for the 2018 rental year, show that Penelec continues to hold a two-to-one pole ownership advantage:

Invoice 2018 Rental Year	Joint Use Poles Owned by Penelec	Joint Use Poles Owned by Verizon	Total Joint Use Poles
#21001	90,039	43,617	133,656
#21005	960	383	1,343
#21010	50,064	24,056	74,120
#21011	4,628	4,933	9,561
#21025	1,168	411	1,579
Total	146,859	73,400	220,259
Percent Ownership	**67%**	**33%**	

25. Each year, Penelec charges Verizon for the net rental amount that results when Penelec's rent for use of Verizon's poles is subtracted from Verizon's rent for use of Penelec's poles. Using the 2018 rental year as an example, Penelec charged Verizon more than [redacted] in net pole attachment rent across five invoices as follows (with annual net rental amounts rounded to the nearest dollar):

Verizon Gross Rent		-	Penelec Gross Rent		=	Verizon Net Rent
Invoice	**Penelec Poles**	**Rate for Verizon Use of Penelec Poles**	**Verizon Poles**	**Rate for Penelec Use of Verizon Poles**		**Net Rent Verizon Paid Penelec**
21001	90,039	[redacted]	43,617	[redacted]		[redacted]
21005	960	[redacted]	383	[redacted]		[redacted]
21010	50,064	[redacted]	24,056	[redacted]		[redacted]
21011	4,628	[redacted]	4,933	[redacted]		[redacted]
21025	1,168	[redacted]	411	[redacted]		[redacted]
Total	**146,859**	[redacted]	**73,400**	[redacted]		[redacted]

26. Penelec charged, and Verizon paid, pole attachment rent that was calculated and invoiced in a similar manner for all rental periods following the *Pole Attachment Order*'s 2011 effective date. The following table includes the total net rental amounts that Penelec invoiced, and Verizon paid, for the 2011 through 2018 rental years (with annual net rental amounts rounded to the nearest dollar):

Verizon Gross Rent		-	Penelec Gross Rent		=	Verizon Net Rent
Rental Year	**Penelec Poles**	**Rate for Verizon Use of Penelec Poles**	**Verizon Poles**	**Rate for Penelec Use of Verizon Poles**		**Net Rent Verizon Paid Penelec**
2011	145,168	[redacted]	73,079	[redacted]		[redacted]
2012	145,326	[redacted]	73,285	[redacted]		[redacted]
2013	145,419	[redacted]	73,398	[redacted]		[redacted]
2014	146,720	[redacted]	73,398	[redacted]		[redacted]
2015	146,732	[redacted]	73,398	[redacted]		[redacted]
2016	146,794	[redacted]	73,399	[redacted]		[redacted]
2017	146,814	[redacted]	73,400	[redacted]		[redacted]
2018	146,859	[redacted]	73,400	[redacted]		[redacted]

3) Penn Power

27. Penn Power sends Verizon an annual invoice for Verizon's use of Penn Power's poles, and Verizon sends Penn Power an annual invoice for Penn Power's use of Verizon's

poles. Each party charges rent under a 1999 amendment to the parties' joint use agreement, which took effect when Penn Power owned a substantial majority of the joint use poles. According to the earliest records that Verizon has been able to locate, in 2003, Penn Power owned more than three-quarters of the poles that Penn Power and Verizon share:

	Penn Power	**Verizon**	**Total**
Joint Use Poles (2003)	24,020	6,909	30,929
Percent Ownership	**78%**	**22%**	

28. This pole ownership disparity has not materially changed since the rate methodology took effect. The parties' 2018 invoices show that Penn Power continues to hold a nearly four-to-one pole ownership advantage:

	Penn Power	**Verizon**	**Total**
Joint Use Poles (2018)	25,574	7,416	32,990
Percent Ownership	**78%**	**22%**	

29. Penn Power and Verizon have submitted and paid invoices in a similar manner for all rental periods following the *Pole Attachment Order*'s 2011 effective date. Each year, Penn Power has invoiced Verizon at a [redacted] per pole rate for use of Penn Power's poles and Verizon has invoiced Penn Power at a [redacted] per pole rate for use of Verizon's poles. Both parties have paid the respective invoices in full for the 2011 through 2018 rental years. Verizon has paid Penn Power's invoice in full for the 2019 rental year and has invoiced Penn Power for the 2019 rental year. Subtracting Penn Power's rent for use of Verizon's poles from Verizon's rent for use of Penn Power's poles, shows that Verizon will have paid the following net rental amounts (with annual net rental amounts rounded to the nearest dollar) for the 2011 through 2019 rental years once Penn Power pays Verizon's outstanding invoice for the 2019 rental year:

Verizon Gross Rent		- Penn Power Gross Rent		= Verizon Net Rent	
Rental Year	**Penn Power Poles**	**Rate for Verizon Use of Penn Power Poles**	**Verizon Poles**	**Rate for Penn Power Use of Verizon Poles**	**Net Rent Verizon Paid Penn Power**
2011	25,023	[redacted]	7,151	[redacted]	[redacted]
2012	25,063	[redacted]	7,162	[redacted]	[redacted]
2013	25,063	[redacted]	7,158	[redacted]	[redacted]
2014	25,282	[redacted]	7,158	[redacted]	[redacted]
2015	25,552	[redacted]	7,414	[redacted]	[redacted]
2016	25,554	[redacted]	7,413	[redacted]	[redacted]
2017	25,557	[redacted]	7,411	[redacted]	[redacted]
2018	25,574	[redacted]	7,416	[redacted]	[redacted]
2019	25,595	[redacted]	7,415	[redacted]	[redacted]

B. FirstEnergy's Refusal to Negotiate a Just and Reasonable Rate

30. I have knowledge of Verizon's negotiations with FirstEnergy for a just and reasonable pole attachment rental rate that complies with federal law, including the Commission's 2011 *Pole Attachment Order* and 2018 *Third Report and Order*,[5] and I have personally participated in numerous discussions with Met-Ed, Penelec, and Penn Power, and their Maryland affiliate, The Potomac Edison Company ("Potomac Edison"), concerning the possibility of settlement. Some of the correspondence exchanged by the companies during the negotiations is attached to Verizon's Pole Attachment Complaint as Exhibits 18 to 30.

31. As evident from the correspondence, for a few years before the Commission's *Pole Attachment Order* took effect in July 2011, Verizon had been trying to reduce the annual pole attachment rent that it pays FirstEnergy by purchasing poles from Met-Ed. Because Met-Ed refused to sell poles, Verizon wrote to FirstEnergy several times in 2012 to request instead that

[5] *In the Matter of Accelerating Wireline Broadband Deployment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (2018) ("*Third Report and Order*").

Met-Ed provide Verizon a just and reasonable pole attachment rate.[6] Verizon also asked for copies of license agreements with CLECs and cable companies so that it could determine whether Verizon should pay the same rate as its competitors because the license agreements contain comparable terms and conditions to those in the joint use agreements.

32. In response, FirstEnergy took the position that Verizon was not entitled to lower pole attachment rates for joint use agreements that pre-date the *Pole Attachment Order*. But FirstEnergy stated that, if Verizon paid the then-current pole attachment rental invoices in full, it would discuss replacing the joint use agreements with new consolidated joint use agreements containing new rates, terms, and conditions. Verizon, as a result, paid FirstEnergy's rental invoices for 2012 (Met-Ed and Penelec) and 2013 (Penn Power and Potomac Edison) and shortly thereafter, the parties began discussing a new joint use agreement. We first focused on negotiating a new joint use agreement for the Met-Ed territories, with the understanding that the new agreement could then be replicated to also apply to the Penelec, Penn Power, and Potomac Edison territories.

33. FirstEnergy insisted that we first discuss the operational aspects of a new joint use relationship. It eventually became clear that FirstEnergy was using the operational discussions to stall and postpone any discussion of a rental rate reduction. Nearly five years later, in April 2017, I finally participated in a conference call with FirstEnergy about a new rental rate for the Met-Ed territory. As with the operational terms, our conversation focused first on rates for the Met-Ed territory, and it was my expectation that our discussions would later expand to include Penelec, Penn Power, and Potomac Edison.

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[6] *See* Compl. Ex. 17 at VZ00551 (Letter from W. Balcerski, Verizon to M. Wolfe, FirstEnergy (Apr. 30, 2012)); Compl. Ex. 18 at VZ00554 (Email from N. Parrish, Verizon to S. Schafer, FirstEnergy (Aug. 17, 2012)).

34. I was surprised to learn that, after many years of negotiations, FirstEnergy proposed only to convert the current Met-Ed contract rates into reciprocal per-pole rates that would essentially provide Met-Ed the same net rental income each year. Deanna DeWitt, Supervisor, Joint Use and Cable Locating, FirstEnergy, followed up with a spreadsheet that confirmed that, after five years of negotiation, Met-Ed was proposing to reduce Verizon's annual net rental obligation by just $465.[7]

35. During the summer of 2017, I continued to discuss rental rates with Ms. DeWitt and Stephen Schafer, Manager, Joint Use & Cable Locating, FirstEnergy, and made a compromise offer that would have accepted, for purposes of settlement, certain rate inputs that were very favorable to Met-Ed and not supported by real-world conditions.[8] Met-Ed rejected the offer. During a conference call in July 2017, FirstEnergy claimed for the first time that the joint use agreements provide Verizon competitive benefits that justify Verizon's payment of higher pole attachment rates than are charged CLECs and cable companies. FirstEnergy did not identify or quantify these "competitive benefits," and had still not provided the license agreements necessary to validate the new claims, even though Verizon requested them in 2012.

36. I reiterated Verizon's request for copies of license agreements, and, in July 2017, Ms. DeWitt emailed me a license agreement that she described as a "template presented to requesting CLEC / CATV entities with the understanding that modifications are negotiated."[9] A copy of this draft license agreement is attached to Verizon's Pole Attachment Complaint as

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[7] *See* Compl. Ex. 21 at VZ00572 (Email from D. DeWitt, FirstEnergy to S. Mills, Verizon (Apr. 12, 2017)).

[8] Met-Ed did not produce any verified survey data, and there is none of which I am aware, that would permit a departure from the FCC's presumptive rate inputs for any of the defendants.

[9] *See* Compl. Ex. 23 at VZ00577 (Email from D. DeWitt, FirstEnergy to S. Mills, Verizon (July 21, 2017)).

Exhibit 13. Although the draft license agreement only references [redacted], FirstEnergy relied on the draft license agreement in our later discussions and correspondence as showing the terms and conditions that Met-Ed and its affiliates, including Penelec and Penn Power, would seek from CLECs and cable companies.

37. The draft license agreement reflects terms that must be the most favorable to FirstEnergy because it is the starting point for its negotiations with licensees. My review of the proposed license terms nonetheless confirmed my expectation that Verizon should receive the same rental rate as its competitors. That understanding was further confirmed upon my review of two license agreements that FirstEnergy companies entered with Verizon affiliates Bell Atlantic – Pennsylvania and MCI Communications Services, Inc. (collectively, the "affiliate license agreements"). Copies of these license agreements are attached to Verizon's Pole Attachment Complaint as Exhibits 14 and 15. They include terms and conditions that are significantly different from the terms and conditions in the draft license agreement and establish that the draft license agreement is not an accurate representation of the terms and conditions that apply to Verizon's competitors. FirstEnergy, however, has still not provided a single signed license agreement showing the terms and conditions that it provides to Verizon's competitors.

38. I have nonetheless reviewed the draft license agreement, as well as the affiliate license agreements. I have also reviewed over a hundred additional pole attachment agreements throughout my 23-year career. Based on my experience, I have concluded that the terms and conditions in FirstEnergy's draft license agreement and the affiliate license agreements are comparable to the terms and conditions in the joint use agreements and do not justify any increase over the new telecom rate paid by Verizon's competitors, much less the significant rate difference charged under the joint use agreements.

39. Having reviewed the draft license agreement, I continued to try to negotiate a just and reasonable rate. But it became clear to me that FirstEnergy was unwilling to make any material movement on rates, let alone treat Verizon as comparable to its competitors. For example, in July 2017, FirstEnergy made a rate offer that would have charged Verizon [redacted] per pole for use of Met-Ed's poles, while charging Met-Ed a lower [redacted] per pole rate for use of Verizon's poles.[10] Under the offer, Verizon would have received a mere 1.5% discount off the most-recently invoiced amount of [redacted], as the offer would have produced a net rental obligation to Met-Ed of about [redacted]. At the same time, Met-Ed acknowledged that it was charging Verizon's competitors a [redacted] new telecom rate.[11]

40. Ms. DeWitt claimed that Met-Ed's rate offer was based on the pre-existing telecom rate formula, but the pre-existing telecom formula, when properly applied, does not produce such a high rate for Verizon. I asked Ms. DeWitt for her rate calculations, which she provided.[12] The calculations showed that FirstEnergy had manipulated the pre-existing telecom rate formula and inputs to increase the rates that Verizon would pay and decrease the rates that Met-Ed would pay.

41. It was clear to me that the rate negotiations with Ms. DeWitt were destined to fail. As a result, I wrote to Ms. DeWitt on November 2, 2017, asked her to propose dates for an executive-level meeting in November, and outlined the allegations that would form the basis of

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[10] *See* Compl. Ex. 23 at VZ00577 (Letter from D. DeWitt, FirstEnergy to S. Mills, Verizon (July 21, 2017)).

[11] *See* Compl. Ex. 13 at VZ00498 (Draft License [redacted]); Compl. Ex. 23 at VZ00577 (Email from D. DeWitt, FirstEnergy to S. Mills, Verizon (July 21, 2017)) (attaching Draft License).

[12] *See* Compl. Ex. 24 at VZ00580-585 (Email from D. DeWitt, FirstEnergy to S. Mills, Verizon (Aug. 11, 2017)).

an FCC complaint if the negotiations were to fail.[13] Ms. DeWitt did not provide any possible executive-level meeting dates in November. Instead, she did not even respond until December 20, 2017, and then asked whether Verizon was "willing to continue to negotiate at our level, or whether you insist on proceeding to executive-level discussions."[14]

42. Meanwhile, having heard nothing from Ms. DeWitt, Brian H. Trosper, Verizon's Vice President – Network Operations & Engineering, reached out directly to Steven Strah, FirstEnergy's Senior Vice President and President, Utilities Business. In a December 20, 2017 letter, Mr. Trosper reiterated Verizon's request for executive-level discussions, outlined the basis for Verizon's claim that Met-Ed, Penelec, Penn Power, and their Maryland affiliate have been violating federal law by charging rates that are unjust and unreasonable, and sought to facilitate discussions by attaching Verizon's new telecom rate calculations for several of the years in dispute.[15]

43. Verizon, in good faith, engaged in face-to-face executive-level discussions with FirstEnergy on April 11, 2018 at Verizon's offices in Basking Ridge, New Jersey. FirstEnergy was represented by David Karafa, Vice President, Distribution Support; Thomas Pryatel, Director, Energy Delivery Operations; Stephen Schafer, Manager, Joint Use & Cable Locating; and Deanna DeWitt, Supervisor, Joint Use and Cable Locating. I attended the meeting, along with Mr. Trosper, Reneta Haynes, Director – Wireline Network Maintenance Contracts and

[13] *See* Compl. Ex. 25 at VZ00587-588 (Letter from S. Mills, Verizon to D. DeWitt, FirstEnergy (Nov. 2, 2017)).

[14] *See* Compl. Ex. 26 at VZ00590-591 (Letter from D. DeWitt, FirstEnergy to S. Mills, Verizon (Dec. 20, 2017)).

[15] *See* Compl. Ex. 27 at VZ00593-646 (Letter from B. Trosper, Verizon to S. Strah, FirstEnergy (Dec. 20, 2017)).

Utility Pole Contracts, and James Slavin, Senior Manager – Network Operations & Engineering, Verizon Wireline Network.

44. The parties were not able to resolve the rental rate dispute at the executive-level meeting. In fact, FirstEnergy had not even shared the rental rate calculations that Verizon provided nearly four months earlier with each of the executives that attended, and so asked Verizon to send another copy after the meeting. Mr. Trosper provided the calculations by email, and the parties then continued their negotiations primarily by email.

45. In the months that followed, FirstEnergy continued to stand in the way of a negotiated just and reasonable rate. For example, in May 2018, FirstEnergy made another offer that relied on manipulations of the pre-existing telecom rate formula to try to perpetuate unreasonably high rental rates. The offer paired lower rates for FirstEnergy to pay Verizon ([redacted] per pole) with higher rates for Verizon to pay First Energy ([redacted] per pole to Met-Ed, [redacted] per pole to Penelec, and [redacted] per pole to Penn Power) even though FirstEnergy uses much more space on a pole.[16] It also would have increased Verizon's annual rental obligation to Penn Power by more than [redacted] and to Maryland affiliate Potomac Edison, by more than [redacted].

46. At that time, FirstEnergy had still not identified any alleged benefits that could even be considered for purposes of calculating a rate higher than the new telecom rate. Finally, in June 2018—six years into the negotiations—Mr. Karafa provided the first list of alleged "competitive benefits" that FirstEnergy claims are sufficient to justify the rental rates it charges

[16] *See* Compl. Ex. 28 at VZ00650 (Email from S. Schafer, FirstEnergy to J. Slavin, Verizon (May 2, 2018)).

Verizon.[17] I disagree that the list identifies anything that provides Verizon a net material advantage over its competitors, and I will explain the basis for my conclusion below.

47. FirstEnergy raised a variety of additional arguments in support of its unjust and unreasonable rates during negotiations in 2018 and 2019. Ultimately, FirstEnergy's position was that it would only consider charging Verizon a new telecom rate if Verizon would "transition … out of the pole-owning business" and sign a CLEC license agreement.[18] Thus, in spite of face-to-face executive-level discussions and years of discussions concerning the possibility of settlement, Verizon has been unable to obtain a just and reasonable rate through negotiations.

C. FirstEnergy's List of Claimed "Competitive Advantages" Does Not Justify Charging Verizon a Rate Higher than the New Telecom Rate.

48. I have reviewed the list of alleged "competitive advantages" that FirstEnergy provided on June 7, 2018.[19] FirstEnergy has not provided any quantifications for these alleged "competitive advantages," has not distinguished among JUAs or operating companies, and has not provided any signed license agreements to support the alleged "advantages." But even without this support, which FirstEnergy must provide to justify charging Verizon a rate higher than the new telecom rate, it is clear to me that FirstEnergy has not identified anything that provides Verizon a net material advantage over its competitors.

49. FirstEnergy listed twenty-four alleged "competitive advantages," but its list is redundant and reduces to ten different claims that do not individually or together give Verizon an

[17] *See* Compl. Ex. 29 at VZ00690 (Email from D. Karafa, FirstEnergy to B. Trosper, Verizon (June 7, 2018)).

[18] *See* Compl. Ex. 28 at VZ00651 (Email from S. Schafer, FirstEnergy to S. Mills, Verizon (May 2, 2018)).

[19] *See* Compl. Ex. 29 at VZ00690 (Email from D. Karafa, FirstEnergy to B. Trosper, Verizon (June 7, 2018)).

advantage, much less a net material advantage, over its competitors. The list is also incomplete because, even though we discussed it numerous times, FirstEnergy never accounted for the significant pole ownership costs that the joint use agreements place on Verizon, but that the license agreements do not place on Verizon's competitors. As a pole owner, Verizon shares in the responsibility for ensuring the safety and reliability of its joint use network with FirstEnergy. Verizon incurs costs in this regard that its competitors do not. These include the costs associated with ensuring that Verizon's construction, operations, and engineering employees are well-versed in the safety standards of FirstEnergy and the National Electrical Safety Code ("NESC"), which apply to the installation, operation, and maintenance of communications lines and equipment. Verizon also has its own safety, reliability, and quality standards, which its engineers and line crews are directed to follow. These pole maintenance costs are recurring and ongoing as Verizon's line crew supervisors conduct random quality-of-work inspections and otherwise seek to ensure continuing compliance with Verizon's, FirstEnergy's, and NESC standards.

50. As a pole owner, Verizon also incurs pole replacement costs that do not apply to its competitors, which generally do not own poles. For example, Verizon has responsibility for replacing its poles when they pose a safety hazard because of damage from car accidents, routine storms, and the like. Verizon also must replace its poles if they are found to be unreasonably interfering with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion, of a public road or publicly owned rail corridor. In some cases, Verizon pays for the new pole and does not receive any contribution from any other attaching entity (which includes CLECs, cable companies, and FirstEnergy). These pole ownership costs significantly drive up Verizon's costs as compared to those incurred by its competitors.

51. FirstEnergy's list of alleged "competitive advantages" does not account for these competitive disadvantages as it should. But even on its own, FirstEnergy's list does not identify anything that justifies charging Verizon a rate higher than the properly-calculated per-pole new telecom rate that applies to Verizon's competitors.

52. *First*, FirstEnergy listed a $1000 "agreement preparation fee" that it may impose on some licensees one time in the year that a license agreement is entered.[20] It is unreasonable for FirstEnergy to claim that Verizon must pay a higher rental rate on every pole every year to cover a one-time $1000 fee, particularly when Verizon did not receive the same one-time $1000 fee from FirstEnergy when it attached to Verizon's poles. And, in fact, Verizon incurs substantial costs to negotiate a pole attachment agreement with FirstEnergy, as evident from the years that my colleagues and I devoted to Verizon's most recent effort to negotiate a new joint use agreement. Verizon has thus incurred far greater "agreement preparation" costs than a $1000 fee that FirstEnergy claims it may impose on some of Verizon's competitors.

53. *Second*, FirstEnergy claimed that there are differences in the way that Verizon, and Verizon's competitors, permit new attachments. These differences, if they exist, do not reflect a competitive advantage. For example, FirstEnergy claims that Verizon's competitors pay higher application fees. But there do not appear to be application fees [redacted], so it is unclear how Verizon could be differently situated from its competitors. Also, because there are no application fees in the joint use agreements, Verizon does not receive application fees from FirstEnergy. There is thus no "net" benefit to Verizon, as Verizon's agreement not to receive application fees from FirstEnergy cancels out any payment of application fees it may have avoided.

[20] *See, e.g.*, Compl. Ex. 14 at VZ00510 (Bell License, Art. XII(1)).

54. I also disagree with FirstEnergy that there is some difference in the speed with which Verizon and its competitors can attach to FirstEnergy's poles. The same tasks must be completed before Verizon, or one of its competitors, attaches facilities to a FirstEnergy-owned pole. For example, Verizon must survey the pole, complete a pole sounding test, look for base rot, measure the new attachment's effect on the storm and ice loading for all facilities on the pole, ensure that there will be the required vertical clearance between the ground and Verizon's cable, determine whether any make-ready is required, coordinate with other attachers if needed, and comply with any other minimum design and structural stability requirements for the pole. I understand that Verizon's competitors would need to complete these tasks as well, would be subject to the same make-ready timelines and overlashing rules, and would use the same electronic notification program (SPANS) to manage the process. Indeed, the Commission's recent make-ready reforms will ensure that all communications attachers can deploy within a comparable time period by establishing accelerated make-ready timelines and providing a one-touch make-ready option for simple make-ready. As a result, the amount of time required to install a comparable attachment should be comparable among communications companies.

55. *Third*, FirstEnergy claimed that Verizon incurs lower engineering, make-ready, and pre-and post-installation survey costs than Verizon's competitors. This is also not evident to me. Verizon completes much of this work itself, and so incurs the cost associated with the work just like its competitors do. For example, Verizon surveys the pole to determine if and what make-ready is required, completes the engineering that is needed to accommodate its attachment, transfers its facilities when required, and reviews its attachments post-installation to ensure they comply with applicable standards.

56. Verizon is also not advantaged with respect to the payment of make-ready costs. In the Penelec service area, Verizon is comparable to its competitors because Verizon pays for make-ready under a "cost-causer" approach like the one that apparently applies to Verizon's competitors.[21] This means that FirstEnergy invoices and Verizon pays the cost of make-ready that FirstEnergy performs for Verizon, just as Verizon's competitors pay FirstEnergy for the make-ready that they require FirstEnergy to perform. Met-Ed and Penn Power do not follow a "cost-causer" approach, but instead treat make-ready as a reciprocal obligation for the parties that requires each party to incur the cost of make-ready that the other party requires. This different approach to make-ready has disadvantaged Verizon as compared to a cost-causer approach because Met-Ed and Penn Power require far more make-ready than Verizon requires. Verizon, as a result, incurs the cost of far more make-ready than it would incur if it was only responsible for the make-ready that Verizon requires.

57. To illustrate the extent of the additional make-ready costs that Verizon incurs in the Met-Ed and Penn Power service areas, I ran a report in SPANS, which is the electronic notification program that the parties use when requesting make-ready. I pulled data regarding activity on Met-Ed, Penn Power, and Verizon poles from January 1, 2014 through September 30, 2019 that involved either a request to establish joint use or a request to replace a pole. In order to isolate the make-ready required by Met-Ed, Penn Power, and Verizon, I filtered out make-ready required by a third-party or needed because of a storm or an accident. I also filtered out entries that were labeled "record correction" because that notation is used when, for example, a joint use pole is identified in the field, but is not found in the database.

[21] Compl. Ex. 13 at VZ00490 (Draft License [redacted]).

58. My analysis showed that, during the January 1, 2014 through September 30, 2019 time period, Met-Ed and Penn Power required Verizon to incur the cost to replace far more poles than Verizon required Met-Ed and Penn Power to replace. In particular, Met-Ed made 135 requests to either establish joint use on a Verizon pole or to replace a Verizon pole. Of those requests, 66 required Verizon to replace a pole at Verizon's sole expense. In contrast, Verizon made 80 requests to either establish joint use on a Met-Ed pole or to replace a Met-Ed pole. Of those requests, just 3 required Met-Ed to replace the pole at Met-Ed's sole expense. Verizon, as a result, required 3 pole replacements, but incurred the cost to replace 66 poles.

59. Over the same time period, Penn Power also imposed far more pole replacement costs on Verizon than Verizon required. In particular, Penn Power made 747 requests to either establish joint use on a Verizon pole or to replace a Verizon pole. Of those requests, 594 required Verizon to replace the pole at Verizon's sole expense. In contrast, Verizon made 535 requests to either establish joint use on a Penn Power pole or to replace a Penn Power pole. Of those requests, just 88 required Penn Power to replace the pole at Penn Power's sole expense. Verizon, as a result, required 88 pole replacements, but incurred the cost to replace 594 poles.

60. This pole replacement data is shown in the following table:

Pole Replacements Verizon Made At Verizon's Cost		**Pole Replacements Verizon Would Have Paid For Under Cost-Causer Approach**	
Met-Ed			
Met-Ed requests to establish joint use on a Verizon pole or to replace a Verizon pole	135	Verizon requests to establish joint use on a Met-Ed pole or to replace a Met-Ed pole	80
Met-Ed requests requiring Verizon to incur pole replacement costs	66	Verizon requests requiring Met-Ed to incur pole replacement costs	3
Percentage of Met-Ed requests requiring Verizon to incur pole replacement costs	48.9%	Percentage of Verizon requests requiring Met-Ed to incur pole replacement costs	3.8%

Penn Power			
Penn Power requests to establish joint use on a Verizon pole or to replace a Verizon pole	747	Verizon requests to establish joint use on a Penn Power pole or to replace a Penn Power pole	535
Penn Power requests requiring Verizon to incur pole replacement costs	594	Verizon requests requiring Penn Power to incur pole replacement costs	88
Percentage of Penn Power requests requiring Verizon to incur pole replacement costs	79.5%	Percentage of Verizon requests requiring Penn Power to incur pole replacement costs	16.4%
Total Pole Replacements Verizon Made At Verizon's Cost	**660**	**Total Pole Replacements Verizon Would Have Paid For Under Cost-Causer Approach**	**91**

61. The above table accounts for the far higher pole replacement costs incurred by Verizon under the Met-Ed and Penn Power approach to make-ready, along with the associated transfer costs for Verizon to transfer its facilities to the new Verizon pole that Met-Ed or Penn Power required. It does not, however, account for the transfer costs that Verizon incurs when Met-Ed or Penn Power decides to replace its own pole, or vice versa. As a result, I reviewed the SPANS data to compare transfer costs associated with each party's decision to replace its own pole. My analysis of the SPANS data showed that, during the January 1, 2014 through September 30, 2019 time period, Verizon also incurred higher transfer costs than it would have incurred under a cost-causer approach.

Transfers Verizon Completed At Verizon's Cost		**Transfers Verizon Would Have Paid For Under Cost-Causer Approach**	
Met-Ed			
Met-Ed requests requiring the replacement of a Met-Ed pole	2,749	Verizon requests requiring the replacement of a Verizon pole	10
Met-Ed requests requiring Verizon to incur transfer costs	1,968	Verizon requests requiring Met-Ed to incur transfer costs	4
Percentage of Met-Ed requests requiring Verizon to incur transfer costs	71.6%	Percentage of Verizon requests requiring Met-Ed to incur transfer costs	40.0%

Penn Power			
Penn Power requests requiring the replacement of a Penn Power pole	2,313	Verizon requests requiring the replacement of a Verizon pole	131
Penn Power requests requiring Verizon to incur transfer costs	1,781	Verizon requests requiring Penn Power to incur transfer costs	58
Percentage of Penn Power requests requiring Verizon to incur transfer costs	77.0%	Percentage of Verizon requests requiring Penn Power to incur transfer costs	44.3%
Total Transfers Verizon Completed At Verizon's Cost	**3,749**	**Total Transfers Verizon Would Have Paid For Under Cost-Causer Approach**	**62**

62. *Fourth*, FirstEnergy stated that Verizon is advantaged because it is not contractually required to affix a tag that identifies its facilities on FirstEnergy's poles and because it can attach to FirstEnergy's multi-ground neutrals, guys, and anchors. I disagree that these are competitive advantages. With respect to tagging, it is a Verizon company policy to tag its facilities, and so Verizon incurs tagging costs like its competitors. With respect to multi-ground neutrals, it is my understanding that, because of the safety concerns created by power facilities on a utility pole, all attachers must attach to the same multi-ground neutral in order to maintain the same electric potential across all systems. Verizon and its competitors, therefore, would not be different. And with respect to guys and anchors, it is my understanding, which is reflected in the affiliate license agreements, that Verizon and Verizon's competitors may attach to FirstEnergy's guys and anchors. But because Verizon's competitors do not need to own poles, only Verizon has the responsibility to let FirstEnergy attach to Verizon's guys and anchors.

63. *Fifth*, FirstEnergy asserted that Verizon is guaranteed more space on each pole than is guaranteed Verizon's competitors. This is false. Verizon is not "guaranteed" any space on FirstEnergy's poles. Some of the joint use agreements designate 3 feet of space as

communications space,[22] but not one of the joint use agreements guarantees that the designated space is reserved for Verizon's exclusive use. And, in my experience, FirstEnergy regularly lets Verizon's competitors install their facilities in the space that is designated as communications space under the joint use agreement and collects additional rent from those third parties without offset to Verizon. Attached to the Pole Attachment Complaint as Exhibit 30 is a copy of the "Joint Use Complete Application Requirements" from FirstEnergy's Field Reference Guide Joint Use, available at https://www.firstenergycorp.com/content/dam/customer/get-help/files/joint-use-policies/application-requirements.pdf, which depict a pole that has facilities of several attachers, and not just the ILEC, within the communications space on a FirstEnergy pole.

64. In addition, Verizon does not want, require, or occupy 3 feet of space or more on FirstEnergy poles. For more than a decade, Verizon has deployed (and continues to deploy) the same light-weight copper and fiber optic cables that its competitors use. Verizon thus generally requires the same amount of space on a utility pole as its competitors and should be presumed to occupy the same one foot of space.

65. FirstEnergy, in contrast, is provided more space on each pole than the joint use agreements designate as power space. And due to the nature of FirstEnergy's facilities, Verizon cannot rent that power space to communications attachers, and must preserve the 40 inches of safety space between FirstEnergy's facilities and any communications attachments. The FCC rate formulas properly recognize that the safety space is FirstEnergy's space. For example, the FCC's default presumptions are that a 37.5-foot pole has 24 feet of unusable space and can

[22] The Met-Ed joint use agreements do not allocate or designate any specific amount of space for Verizon's use.

accommodate 5 attaching entities.[23] These presumptions are consistent with the fact that, with 6 feet of unusable space below ground and 18 feet of unusable space above ground, 4 communications attachers can attach 1 foot apart in the communications space (which is located 18 to 21 feet above ground) and there will still be 10.5 feet on the pole for the power company, including the 40 inches of safety space.

66. *Sixth*, FirstEnergy claimed that Verizon is advantaged because its facilities are generally placed at the lowest location on FirstEnergy's poles. I disagree because Verizon's location on the pole is a disadvantage that increases Verizon's costs. With the generally lowest facilities on the pole, Verizon's facilities are harmed more frequently. They are exposed to more damage from oversized vehicles, vandalism, and similar hazards. They are also damaged more frequently from above by gaffs, ladders, bucket trucks, and contractors who work in the space above Verizon's facilities. Verizon has experienced punctured cables and broken support wires because of its location on the pole.

67. Verizon also receives more requests to raise its cables to accommodate oversize loads, such as house and equipment moves, because of its position on the pole. Standard vertical clearance requirements range from 15.5 feet to 18 feet. If an oversize load is taller, Verizon will likely be the only attacher that must temporarily raise its facilities.

68. Verizon also incurs increased pole transfer costs because it must regularly make more trips to a pole location to attach or complete a pole transfer. It is standard practice that facilities are transferred from top to bottom, which means that Verizon must wait for all other facilities to be moved before it can transfer its facilities. Verizon regularly arrives at a pole transfer location and learns that all facilities have not been transferred as scheduled. When that

[23] *See* 47 C.F.R. §§ 1.1409(c), 1.1410.

happens, Verizon cannot transfer its facilities, but must return at a later time to determine whether the pole is ready to complete the transfer.

69. Verizon nonetheless remains generally the lowest attacher on a pole because the location is consistent with standard construction practices that pre-date third-party attachers and must be maintained to ensure that all companies can quickly identify the ownership of facilities on the pole. Maintaining the consistency of Verizon's location also prevents the crossover of facilities that would occur mid-span if facilities were located in different locations on different poles. And, in my experience, there is not any material difference between the time and effort required to work on Verizon's facilities and on its competitor's facilities. The same safety measures and preparation are required. Verizon's location on the pole, therefore, continues because it benefits all attachers, but only increases Verizon's costs.

70. *Seventh*, FirstEnergy said that it may charge Verizon's competitors fees for unauthorized attachments and safety violations. These fees, however, cannot be imposed if attachments are properly reported and safely made. They can also be avoided after the fact by promptly fixing any problem after notice is given.[24] Verizon, as a result, cannot be advantaged because it does not pay fees that its competitors also do not need to pay.

71. *Eighth*, FirstEnergy claimed that Verizon is advantaged by more favorable insurance and indemnification provisions than apply to Verizon's competitors. But with respect to insurance, I confirmed that Verizon carries the insurance that is required by FirstEnergy's draft license agreement. Verizon thus incurs the same cost as its competitors. And with respect to indemnification, the joint use agreements include an assignment of liability clause like the

[24] *See* [redacted]; *Pole Attachment Order*, 26 FCC Rcd at 5291 (¶ 115).

license agreements. FirstEnergy also fails to account for the fact that the insurance and indemnification provisions in the joint use agreements are reciprocal and apply also to FirstEnergy's use of Verizon's poles. As a result, they impose obligations on Verizon that are absent from FirstEnergy's license agreements. This necessarily eliminates any "net" benefit to Verizon.

72. *Ninth*, FirstEnergy argued that Verizon is not required to post a security bond as its competitors must. This requirement [redacted] and so Verizon cannot be advantaged by its absence from the joint use agreements. Also, any avoidance of a security bond in the joint use agreements is reciprocal, meaning that FirstEnergy does not have to post a security bond to attach facilities to Verizon's poles. That cancels out any possible net advantage to Verizon.

73. *Finally*, FirstEnergy relied on the evergreen provisions in the joint use agreements, noting that they give Verizon access to FirstEnergy's poles after the joint use agreements are terminated. This is not an advantage. Verizon's competitors have a federal right of access to FirstEnergy's poles that is far more protective of their right to deploy broadband and other advanced services on needed infrastructure in Pennsylvania.

Stephen C. Mills

Sworn to before me on
this 19th day of November, 2019

Christy C. Rogers
Notary Public

CHRISTY C. ROGERS
NOTARY PUBLIC
REG. # 368615
MY COMMISSION EXPIRES
5/31/2022
COMMONWEALTH OF VIRGINIA

Exhibit B

Before the
Federal Communications Commission
Washington, DC 20554

VERIZON PENNSYLVANIA LLC and VERIZON NORTH LLC, Complainants, v. METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, and PENN POWER COMPANY, Defendants.	Proceeding No. 19-___ Bureau ID No. EB-19-MD-___

AFFIDAVIT OF MARK S. CALNON, PH.D.

COMMONWEALTH OF PENNSYLVANIA)
) ss.
COUNTY OF BUCKS)

I, MARK S. CALNON, being sworn, depose and say:

1. I am a senior consultant on economic and regulatory policy supporting Verizon's Network Operations & Engineering Group. I am executing this Affidavit in support of the Pole Attachment Complaint of Verizon Pennsylvania LLC ("Verizon Pennsylvania") and Verizon North LLC ("Verizon North") (collectively, "Verizon") against the Pennsylvania operating subsidiaries of FirstEnergy Corp. known as Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), and Pennsylvania Power Company ("Penn Power") (collectively, "FirstEnergy"). I am also executing an Affidavit today in support of a related Pole Attachment Complaint that Verizon Maryland LLC is filing against the Maryland operating subsidiary of FirstEnergy Corp. known as The Potomac Edison Company ("Potomac Edison"). I

know the following of my own personal knowledge and, if called as a witness in this action, I could and would testify competently to these facts under oath.

2. I have a Bachelor of Arts degree in Economics from St. Michaels College and a Ph.D., also in Economics, from the University of Colorado. My professional experience began over 30 years ago and spans economic and regulatory policy issues in telecommunications and energy markets domestically and internationally. My specific areas of expertise include demand analysis, strategic planning, pricing and policy analysis focused primarily on the regulated product and service offerings of incumbent telecom and electric distribution companies. My responsibilities have included estimating the demand for wireline telephone service, the demand for the various jurisdictional usage classifications of the wireline network (local, intralata toll, interlata toll and switched access) as well as the demand for various new / advanced service offerings. My work in the area of pricing and costing has included the design of methodologies to determine the proper price levels and rate relationships between the wholesale provision of access services (switched and special) and retail toll and private line offerings. I have also developed pricing methodologies consistent with the market-opening requirements of the Telecommunications Act of 1996 ("TA96"). Following passage of TA96, I have also been responsible for developing studies documenting the level of competition in various market areas and advocating market-appropriate levels of regulatory relief. I have also provided economic analysis supporting litigation in the areas of damage claims regarding alleged delays in provisioning new services and claims of unreasonable discrimination relating to the pricing and costing practices associated with third party make-ready costs and pole rental rates.

3. Over the course of my career I have participated in over 30 regulatory proceedings before 20 state commissions. My responsibilities in these proceedings have

included the development and filing of written testimony, participation in industry workshops, settlement conferences and ex parte presentations for Commissioners and their staff. I have also filed Affidavits with the Federal Communications Commission to support Pole Attachment Complaints filed by Verizon Florida LLC against Florida Power and Light Company and by Verizon Virginia LLC and Verizon South Inc. against Virginia Electric and Power Company d/b/a Dominion Virginia Power.[1]

4. I have relied on the best data available to Verizon in calculating the rental rates detailed in this Affidavit. I reserve the right to supplement or revise this Affidavit upon review of additional data and information, including data and information provided by FirstEnergy during the course of this proceeding.

A. FirstEnergy's Rental Rates Are Much Higher than Properly Calculated New Telecom Rates.

5. I calculated the per-pole new telecom rates that apply to Verizon's use of FirstEnergy's poles for the 2011 through 2019 rental years using the best information available to Verizon. My new telecom rate calculations are attached as Exhibits C-1 (Met-Ed), C-2 (Penelec), and C-3 (Penn Power).

6. In this section, I explain the formula, inputs, and data that I used to complete the calculations at Exhibits C-1 through C-3. My analysis shows that, for the 2011 through 2018 rental years for which all three FirstEnergy companies have invoiced and collected rent from

[1] *See* Docket No. 15-190, File No. EB-15-MD-006, Pole Attachment Complaint Ex. A (Aug. 3, 2015) and Pole Attachment Complaint Reply Ex. A (Feb. 9, 2016); Docket No. 14-216, File No. EB-14-MD-003, Pole Attachment Complaint Ex. B (Jan. 31, 2014) and Pole Attachment Complaint Reply Ex. A (Nov. 24, 2015); Pole Attachment Complaint Ex. A, Docket No. 15-73, File No. EB-15-MD-002 (Mar. 13, 2015).

Verizon,[2] the average new telecom rate for Verizon's use of FirstEnergy's poles was $8.42 per pole. FirstEnergy instead charged Verizon an effective per pole rental rate that averaged [redacted] per-pole,[3] which is [redacted] times this average $8.42 per pole new telecom rate.[4]

7. My calculations use the FCC's new telecom formula, which has two basic components: (1) the annual cost of pole ownership and (2) the percentage of that annual cost assigned to an attaching party, which reflects the direct space occupied by the attaching party and a share of the unusable space on the pole.[5] Stated otherwise, the maximum rate that may be charged under the new telecom rate formula, is calculated as follows:

Rate = Space Factor x Cost

$$\text{Where Space Factor} = \left[\frac{\left(\text{Space Occupied}\right) + \left(\frac{2}{3} \times \frac{\text{Unusable Space}}{\text{No. of Attaching Entities}}\right)}{\text{Pole Height}} \right]$$

And Cost = Net Cost of Bare Pole x Carrying Charge Rate x Cost Allocator

8. When calculating the space factor for determining a new telecom rate for Verizon's use of FirstEnergy's poles, I used the presumptive inputs from the Commission's regulations, which provide that the space occupied by a telecommunications attacher is 1 foot, the amount of unusable space is 24 feet, pole height is 37.5 feet, and the average number of

[2] To date, Penn Power is the only defendant that has invoiced pole attachment rent for the 2019 rental year.

[3] My calculation of the effective per pole rate that FirstEnergy charged appears in Section B.

[4] [redacted] per pole / $8.42 per pole = [redacted] times.

[5] 47 C.F.R. § 1.1406(d).

attaching entities is 5.[6] I used the presumption that there are an average of 5 attaching entities because FirstEnergy serves areas in Pennsylvania that are urbanized under the Commission's regulations.[7] Met-Ed's service territory includes Reading, Berks County, and York County; Penelec's service territory includes Erie, Cambria County, and Somerset County; and Penn Power's service territory includes Lawrence County and Mercer County.[8] Each of these areas has a population greater than 50,000,[9] and the Commission's rules state that "[i]f any part of the utility's service area within the state has a designation of urbanized (50,000 or higher population) by the Bureau of Census, United States Department of Commerce, then all of that service area shall be designated as urbanized for purposes of determining the presumptive average number of attaching entities."[10]

9. Use of these presumptive inputs results in a space factor of 0.1120, which I used to calculate the new telecom rate for Verizon's use of FirstEnergy's poles:

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[6] 47 C.F.R. §§ 1.1409(c), 1.1410.

[7] 47 C.F.R. § 1.1417(c); *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5304 (¶ 149 n. 449) (2011) ("*Pole Attachment Order*") ("An urbanized service area has 50,000 or higher population, while a non-urbanized service area has under 50,000 population.").

[8] Compl. Ex. A at VZ00004 (Aff. of S. Mills, Nov. 19, 2019, ¶ 5 ("Mills Aff.")).

[9] *See* QuickFacts, U.S. Census Bureau, *available at* https://www.census.gov/quickfacts (Reading = 88,495; Berks County = 420,152; York County = 448,273; Erie = 96,471; Cambria County = 131,730; Somerset County = 73,952; Lawrence County = 86,184, Mercer County = 110,683).

[10] 47 C.F.R. § 1.1409(c).

Space Factor (2011 – 2019 Rental Years):			
Space Occupied by Verizon:		1 ft	
Total Usable Space (2/3)		0.667 ft	
Total Usable Space	13.5 ft		
Total Pole Height	37.5 ft		
Unusable Space		24 ft	
Average Number of Attaching Entities		5	
SPACE FACTOR			**0.1120**

10. To calculate the cost component of the new telecom formula, I required three inputs: net investment per distribution pole, carrying charge rate, and cost allocator. I used a cost allocator of 0.66 when calculating rates for use of FirstEnergy's poles because Commission rules require that value when the average number of attaching entities input is 5.[11] For the other two inputs to the cost calculation, I used each defendant's reported cost data from the immediately preceding year to calculate a particular rental year's new telecom rate (*i.e.*, I used 2010 cost data to calculate 2011 new telecom rates).

11. I used the following formula to calculate net investment per distribution pole:

$$\frac{\text{Net Pole Investment x (1 - Appurtenances Factor)}}{\text{Number of Poles}}$$

where net pole investment is the result of reducing gross investment assigned to the poles account by the amount of the depreciation and deferred tax reserves assigned (or allocated) to these accounts.[12] The appurtenance factor, which eliminates investment in non-pole

[11] 47 C.F.R. § 1.1406(d)(2)(i).

[12] *In the Matter of Amendment of Commission's Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12122-23, 12161 (¶¶ 32, 121) (2001).

appurtenances, is presumptively 15 percent for poles owned by an electric utility, and so I used the 15 percent value when calculating new telecom rates for use of FirstEnergy's poles.[13]

12. I calculated the carrying charge rate based on reported data about administrative expenses, maintenance expenses, depreciation, and taxes from the FERC Form 1 filed for each defendant, along with its "weighted average cost of capital, both debt and equity."[14] For the 2011 through 2014 rental years, I used cost of capital inputs that were, at that time, the rates of return most recently set by the Pennsylvania Public Utility Commission ("PUC"). I do not have access to the rates of return that result from confidential settlements that the PUC approved to resolve the defendants' 2014 and 2016 rate cases.[15] A proper application of the new telecom rate formula would use these updated rates of return, although it appears that the defendants continue to use the older, outdated rates of return to unreasonably increase the pole attachment rates that they charge all attachers.[16] Without access to the confidential information (available to FirstEnergy but not to Verizon), for the 2015 through 2019 rental years, I used publicly available documents[17] to calculate the most accurate rate of return possible. My calculations are detailed at Exhibit C-4 and I reserve the right to update my calculations when FirstEnergy produces the information from its 2014 and 2016 rate cases.

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[13] *Amendment of Rules & Policies Governing the Attachment of Cable Television Hardware to Util. Poles*, Report and Order, 2 FCC Rcd 4387 ¶ 19 (1987).

[14] *See Matter of Multimedia Cablevision, Inc*., 11 FCC Rcd 11202, 11215 (¶ 36) (1996).

[15] *See* Pa. PUC Docket R-2014-2428745 (Met-Ed); Pa. PUC Docket R-2014-2428743 (Penelec); PA PUC Docket R-2014-2428744 (Penn Power); Pa. PUC Docket R-2016-2537349 (Met-Ed); PA PUC Docket R-2016-2537352 (Penelec).

[16] *See* Compl. Ex. 28 at VZ00648-687 (Email from S. Schafer, FirstEnergy, to J. Slavin, Verizon (May 11, 2018)).

[17] Relevant excerpts of these documents are attached to Verizon's Pole Attachment Complaint as Exhibits 36-43.

13. The new telecom formula (*i.e.*, Space Factor x Net Investment per Distribution Pole x Carrying Charge Rate x Cost Allocator), using the inputs described above and each operating company's cost data, produces the following per-pole rates for Verizon's use of FirstEnergy's poles, as set forth in more detail in Exhibit C-1 (Met-Ed), C-2 (Penelec), and C-3 (Penn Power):

Verizon's Use of Met-Ed's Poles

Rental Year Using data from	**2011** 2010	**2012** 2011	**2013** 2012	**2014** 2013	**2015** 2014	**2016** 2015	**2017** 2016	**2018** 2017
Space Factor	0.1120	0.1120	0.1120	0.1120	0.1120	0.1120	0.1120	0.1120
multiplied by								
Net Investment per Distribution Pole	$324.00	$389.35	$423.90	$413.20	$458.77	$462.43	$473.97	$580.94
multiplied by								
Capital Carrying Charge Rate	34.63%	34.31%	32.14%	16.45%	27.56%	25.71%	27.26%	28.41%
multiplied by								
Urbanized Service Area Cost Allocator	0.66	0.66	0.66	0.66	0.66	0.66	0.66	0.66
equals								
New Telecom Rate (per pole)	**$8.29**	**$9.87**	**$10.07**	**$5.02**	**$9.35**	**$8.79**	**$9.55**	**$12.20**

Verizon's Use of Penelec's Poles

Rental Year Using data from	**2011** 2010	**2012** 2011	**2013** 2012	**2014** 2013	**2015** 2014	**2016** 2015	**2017** 2016	**2018** 2017
Space Factor	0.1120	0.1120	0.1120	0.1120	0.1120	0.1120	0.1120	0.1120
multiplied by								
Net Investment per Distribution Pole	$343.23	$365.97	$377.45	$395.05	$429.80	$440.74	$439.88	$534.63
multiplied by								
Capital Carrying Charge Rate	25.33%	25.11%	25.75%	17.83%	21.90%	22.03%	23.04%	26.56%
multiplied by								

Urbanized Service Area Cost Allocator	0.66	0.66	0.66	0.66	0.66	0.66	0.66	0.66
equals								
New Telecom Rate (per pole)	**$6.43**	**$6.79**	**$7.18**	**$5.21**	**$6.96**	**$7.18**	**$7.49**	**$10.49**

Verizon's Use of Penn Power's Poles

Rental Year Using data from	**2011** 2010	**2012** 2011	**2013** 2012	**2014** 2013	**2015** 2014	**2016** 2015	**2017** 2016	**2018** 2017
Space Factor	0.1120	0.1120	0.1120	0.1120	0.1120	0.1120	0.1120	0.1120
multiplied by								
Net Investment per Distribution Pole	$294.14	$303.75	$339.59	$343.25	$381.65	$415.53	$424.62	$537.53
multiplied by								
Capital Carrying Charge Rate	33.56%	37.70%	33.92%	32.37%	31.68%	30.60%	28.92%	28.14%
multiplied by								
Urbanized Service Area Cost Allocator	0.66	0.66	0.66	0.66	0.66	0.66	0.66	0.66
equals								
New Telecom Rate (per pole)	**$7.30**	**$8.47**	**$8.51**	**$8.21**	**$8.94**	**$9.40**	**$9.08**	**$11.18**

14. For comparative purposes, the straight average of the new telecom rates for the defendants for the 2011 through 2018 rental years is $8.42 per pole:

New Telecom Rates (per pole)	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**Average**
Met-Ed	$8.29	$9.87	$10.07	$5.02	$9.35	$8.79	$9.55	$12.20	$9.14
Penelec	$6.43	$6.79	$7.18	$5.21	$6.96	$7.18	$7.49	$10.49	$7.22
Penn Power	$7.30	$8.47	$8.51	$8.21	$8.94	$9.40	$9.08	$11.18	$8.89
Average	$7.34	$8.38	$8.59	$6.15	$8.42	$8.46	$8.71	$11.29	**$8.42**

15. As detailed below, Verizon effectively paid FirstEnergy [redacted] per pole during these rental years, which is [redacted] times this average new telecom rate[18] and [redacted] more per pole.[19]

B. FirstEnergy Charges Verizon Unreasonably High Pole Attachment Rates in Pennsylvania.

16. FirstEnergy has charged and collected from Verizon pole attachment rates far higher than the new telecom rate since at least the effective date of the 2011 *Pole Attachment Order*. Two of the three FirstEnergy operating companies (Penelec and Penn Power) charged per-pole rental rates, while one operating company (Met-Ed) charged a far higher rental rate on a subset of poles.[20] To permit a proper comparison of the per-pole difference between the rental rates charged by FirstEnergy and the per-pole rates that result from a proper application of the new telecom formula, I have converted the rental rates charged by Met-Ed into equivalent per-pole rates across all Met-Ed poles to which Verizon is attached.

17. There are several ways to convert the pole attachment rates that Met-Ed charged into per-pole rates. One way would be to determine the per-pole rate that Verizon would pay for use of Met-Ed's poles if Met-Ed paid nothing for use of Verizon's poles. Using the 2018 rental year as an example, this analysis shows that Met-Ed charged and collected rent from Verizon that was equivalent to charging Verizon [redacted] per pole (rounded to the nearest cent) for use of Met-Ed's poles with Met-Ed paying Verizon nothing for use of Verizon's poles:

[18] [redacted] per pole / $8.42 per pole = [redacted] times.

[19] [redacted] per pole - $8.42 per pole = [redacted] per pole.

[20] Compl. Ex. A at VZ00004-05 (Mills Aff. ¶ 7).

2018 Invoice	JUA Rental Rate	No. of Poles to which Rental Rate Applies	Rental Amount
Verizon Rent	[redacted]	41,725	[redacted]
Met-Ed Rent	--	--	--
Net Rent Verizon Paid Met-Ed			[redacted]
Alternate Approach	Per-Pole Rental Rate	No. of Poles to which Rental Rate Applies	Rental Amount
Verizon Rent	[redacted]	129,421	[redacted]
Met-Ed Rent	$0.00	30,027	$0
Net Rent Verizon Would Pay Met-Ed			[redacted]

This calculation illustrates the unreasonableness of the rental rates that Met-Ed has charged and collected, because Met-Ed requires far more space on utility poles than Verizon requires. There is no reasonable economic justification for setting rental rates that charge Verizon [redacted] per pole for use of less space on a pole than Met-Ed uses for free.

18. Another way to compare the rental rates that Met-Ed charged Verizon to the per-pole rates that result from a proper application of the FCC's new telecom formula assigns the same per-pole rate to Met-Ed's use of Verizon's poles as applies to Verizon's use of Met-Ed's poles. This so-called "reciprocal rate" approach, which charges both parties the same rate, also fails to account for the fact that Met-Ed uses far more space on a pole than is used by Verizon, and so should pay a higher rate given the FCC's expectation that electric utilities would pay a rate that accounts for their greater use of space on the pole.[21] But, by at least assigning some cost to Met-Ed's use of Verizon's poles, this reciprocal rate approach provides a useful way to compare the contract rates to the per-pole rates that result from the new telecom formula.

[21] *See Verizon Va., LLC v. Va. Elec. & Power Co*., 32 FCC Rcd 3750, 3760 (¶ 21 n.78) (EB 2017) (quoting *Pole Attachment Order*, 26 FCC Rcd at 5337 (¶ 218 n.662)).

19. I calculated the reciprocal per-pole rates, rounded to the nearest cent, that are equivalent to the rates Met-Ed charged for the 2011 through 2018 rental years as follows:

Rental Year	Verizon Gross Rent to Met-Ed		Met-Ed Gross Rent to Verizon	
	Met-Ed Poles	**Per-Pole Reciprocal Rate**	**Verizon Poles**	**Per-Pole Reciprocal Rate**
2011	129,306	[redacted]	30,015	[redacted]
2012	129,288	[redacted]	30,018	[redacted]
2013	129,308	[redacted]	30,021	[redacted]
2014	129,324	[redacted]	30,021	[redacted]
2015	129,421	[redacted]	30,023	[redacted]
2016	129,422	[redacted]	30,026	[redacted]
2017	129,422	[redacted]	30,026	[redacted]
2018	129,421	[redacted]	30,027	[redacted]

20. As noted above, I calculated a straight average of these effective per-pole rates (which are equivalent to the rates charged by Met-Ed) and the per-pole rates charged by Penelec and Penn Power for comparative purposes. My calculation shows that the average per-pole rate that FirstEnergy charged and collected from Verizon in Pennsylvania for the 2011 through 2018 rental years (using the per-pole rates that are equivalent to the rates charged by Met-Ed) was [redacted] per pole:

Effective Contract Rates (per pole)	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**Avg.**
Met-Ed	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Penelec	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Penn Power	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Average	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

21. Comparing the [redacted] average per-pole rental rate that FirstEnergy charged and collected from Verizon to the average $8.42 per-pole rental rate that results from a proper

application of the FCC's new telecom rate formula shows that Verizon has been paying FirstEnergy rates averaging more than [redacted] times the new telecom rate since the effective date of the *Pole Attachment Order*, for an average annual per-pole overpayment of [redacted] per pole[22]:

	Average Per-Pole Contract Rate (2011-2018)	**Average Per-Pole New Telecom Rate (2011-2018)**	**Average Contract Rate Compared to Average New Telecom Rate**
Met-Ed	[redacted]	$9.14	[redacted] times
Penelec	[redacted]	$7.22	[redacted] times
Penn Power	[redacted]	$8.89	[redacted] times
Average	[redacted]	**$8.42**	[redacted] **times**

22. This calculation understates the unreasonableness of the rental rates charged and collected by FirstEnergy because it does not account for more favorable rates that apply to FirstEnergy's use of more space on Verizon's poles. Under the FCC's default presumptions, Verizon occupies 1 foot of space on a pole and FirstEnergy occupies 10.5 feet of space.[23] But, using the 2018 rental year as an example, Penelec paid [redacted] per pole to use Verizon's poles, which is [redacted] lower than the [redacted] per pole rate Verizon paid Penelec. For 2018, Penn Power paid [redacted] per pole to use Verizon's poles, which is just [redacted] times the [redacted] per pole rate Verizon paid Penn Power. And, as noted above, Met-Ed charged Verizon rent for the 2018 rental year that was the same as if Met-Ed charged Verizon [redacted] per pole (rounded to the nearest cent), but paid Verizon nothing for use of 30,027 Verizon poles.

[22] [redacted] per pole - $8.42 per pole = [redacted] per pole.

[23] *See* 47 C.F.R. §§ 1.1409(c), 1.1410; *see also* Compl. Ex. A at VZ00029-30 (Mills Aff. ¶ 65).

C. FirstEnergy Collected Over [redacted] in Excess Rent from Verizon Since the Effective Date of the *Pole Attachment Order*.

23. FirstEnergy's decision to continue charging and collecting the contract rates despite Verizon's right to just, reasonable, and competitively neutral rates under federal law has denied Verizon over [redacted], on average, in annual net rent each year since the effective date of the *Pole Attachment Order*, for a total of over [redacted] to date that should be refunded to Verizon. In this section, I explain my calculations of these amounts.

24. I calculated Verizon's overpayments in accordance with FCC regulations, which give the Commission authority to award refunds consistent with the applicable statute of limitations.[24] Because I understand that the applicable statute of limitations in Pennsylvania permits recovery as far back as the July 12, 2011 effective date of the *Pole Attachment Order*,[25] I included all rental periods since July 12, 2011 in my calculation.

25. To ensure that Verizon and FirstEnergy have proportional rates for use of each other's poles, I first calculated the proportional per-pole new telecom rates that would apply to FirstEnergy's use of Verizon's poles if Verizon pays the new telecom rental rates calculated in Exhibits C-1 through C-3. My calculations of the proportional rates for FirstEnergy's use of Verizon's poles are attached as Exhibit C-5. These calculations follow the same approach detailed above with respect to Exhibits C-1 through C-3, except my annual pole cost calculation is based on Verizon's reported ARMIS data[26] and the 5 percent appurtenance factor that

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[24] 47 C.F.R. § 1.1407(a).

[25] Compl. ¶ 57.

[26] The rate calculations for Met-Ed's, Penelec's, and Penn Power's use of Verizon's poles are based on the totals reported for the following four study areas: Verizon North LLC – Contel Pennsylvania (COPA), Verizon North LLC – Contel Quaker State (COQS), Verizon North LLC – Pennsylvania (GTPA), and Verizon Pennsylvania LLC – Pennsylvania (PAPA). My

presumptively applies to poles owned by an incumbent local exchange carrier ("ILEC"), and my space factor calculation uses 10.5 feet for the space occupied input to reflect the amount of space the Commission's default presumptions assume is occupied by an electric utility.[27]

26. I then calculated the net rental amount (meaning Verizon's rent for use of FirstEnergy's poles less FirstEnergy's rent for use of Verizon's poles) that results from the proportional new telecom rates calculated in Exhibits C-1 through C-3 and C-5. The following tables include this calculation for each defendant for the applicable Pennsylvania statute of limitations period:

New Telecom Net Rental Calculation: Met-Ed

Verizon Gross Rent		-	Met-Ed Gross Rent		=	Verizon Net Rent
Rental Year	**Met-Ed Poles**	**New Telecom Rate for Verizon Use of Met-Ed Poles**	**Verizon Poles**	**New Telecom Rate for Met-Ed Use of Verizon Poles**		**Net Rent**
2011	129,306	$8.29	30,015	$9.63		$368,929 (172 days)
2012	129,288	$9.87	30,018	$9.71		$984,598
2013	129,308	$10.07	30,021	$12.44		$928,670
2014	129,324	$5.02	30,021	$12.15		$284,451
2015	129,421	$9.35	30,023	$15.70		$738,725
2016	129,422	$8.79	30,026	$12.48		$762,895
2017	129,422	$9.55	30,026	$14.70		$794,598
2018	129,421	$12.20	30,027	$19.11		$1,005,120

calculation of the proportional rate for the 2011 through 2018 rental years reflect Verizon's use of Part 32 Uniform System of Accounts (USOA) accounting. My calculation of the proportional rate for the 2019 rental year reflects Verizon's transition to generally accepted accounting principles (GAAP) and includes the implementation rate difference referenced at 47 C.F.R. § 1.1406(e).

[27] *See* Compl. Ex. A at VZ00029-30 (Mills Aff. ¶ 65).

New Telecom Net Rental Calculation: Penelec

Verizon Gross Rent			- Penelec Gross Rent		= Verizon Net Rent
Rental Year	**Penelec Poles**	**New Telecom Rate for Verizon Use of Penelec Poles**	**Verizon Poles**	**New Telecom Rate for Penelec Use of Verizon Poles**	**Net Rent**
2011	145,168	$6.43	73,079	$9.63	$108,233 (172 days)
2012	145,326	$6.79	73,285	$9.71	$275,166
2013	145,419	$7.18	73,398	$12.44	$131,037
2014	146,720	$5.21	73,398	$12.15	($127,375)
2015	146,732	$6.96	73,398	$15.70	($131,094)
2016	146,794	$7.18	73,399	$12.48	$137,961
2017	146,814	$7.49	73,400	$14.70	$20,657
2018	146,859	$10.49	73,400	$19.11	$137,877

New Telecom Net Rental Calculation: Penn Power

Verizon Gross Rent			- Penn Power Gross Rent		= Verizon Net Rent
Rental Year	**Penn Power Poles**	**New Telecom Rate for Verizon Use of Penn Power Poles**	**Verizon Poles**	**New Telecom Rate for Penn Power Use of Verizon Poles**	**Net Rent**
2011	25,023	$7.30	7,151	$9.63	$53,628 (172 days)
2012	25,063	$8.47	7,162	$9.71	$142,741
2013	25,063	$8.51	7,158	$12.44	$124,241
2014	25,282	$8.21	7,158	$12.15	$120,596
2015	25,552	$8.94	7,414	$15.70	$112,035
2016	25,554	$9.40	7,413	$12.48	$147,693
2017	25,557	$9.08	7,411	$14.70	$123,116
2018	25,574	$11.18	7,416	$19.11	$144,198
2019	25,595	$11.80	7,415	$18.28	$166,475

27. These calculations show that Verizon would have paid the following total net rental amounts to FirstEnergy if rent was appropriately set for Verizon and FirstEnergy at properly-calculated proportional per-pole new telecom rental rates:

New Telecom Net Rental Calculation: FirstEnergy Combined

Rental Year	Net Rent to Met-Ed	Net Rent to Penelec	Net Rent to Penn Power	Net Rent to FirstEnergy Combined
2011 (172 days)	$368,929	$108,233	$53,628	$530,790
2012	$984,598	$275,166	$142,741	$1,402,505
2013	$928,670	$131,037	$124,241	$1,183,948
2014	$284,451	($127,375)	$120,596	$277,672
2015	$738,725	($131,094)	$112,035	$719,666
2016	$762,895	$137,961	$147,693	$1,048,550
2017	$794,598	$20,657	$123,116	$938,371
2018	$1,005,120	$137,877	$144,198	$1,287,195
2019	Not yet invoiced		$166,475	$166,475 to date

28. Verizon paid FirstEnergy rates far higher than new telecom rates for the time period covered by the applicable Pennsylvania statute of limitations. In the next table and at Exhibit C-6, I compare the amounts that Verizon paid FirstEnergy to the amounts Verizon should have paid FirstEnergy if rent was appropriately set at properly-calculated proportional per-pole new telecom rental rates:

Refund Calculation: New Telecom Rates

Rental Year	Net Rent Verizon Paid FirstEnergy	Net Rent at New Telecom Rates	Verizon's Overpayment to FirstEnergy
2011 (172 days)	[redacted]	$530,790	[redacted]
2012	[redacted]	$1,402,505	[redacted]
2013	[redacted]	$1,183,948	[redacted]
2014	[redacted]	$277,672	[redacted]
2015	[redacted]	$719,666	[redacted]
2016	[redacted]	$1,048,550	[redacted]
2017	[redacted]	$938,371	[redacted]
2018	[redacted]	$1,287,195	[redacted]
2019 (to date)	[redacted]	$166,475	[redacted]
Total	[redacted]	$7,555,171	[redacted]

29. For the July 12, 2011 through 2018 rental period (7.47 years) paid in full to date, these overpayments produce an average annual overpayment of over [redacted] per year.[28]

D. Verizon Also Paid Far More than the Rates that Result from the Pre-Existing Telecom Rate Formula.

30. The Commission set the rate that results from the pre-existing telecom formula as a "hard cap" on the rate that may be charged if an electric utility like FirstEnergy proves by clear and convincing evidence that an ILEC like Verizon "receives net benefits that materially advantage the [ILEC] over other telecommunications providers" under a "new or newly renewed" joint use agreement.[29] I reviewed the list of alleged "competitive advantages" that

[28] [redacted] of the [redacted] overpayment is attributable to the 2011 to 2018 rental years. [redacted] / 7.47 years = [redacted] average annual overpayment.

[29] *In the Matter of Accelerating Wireline Broadband Deployment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, 7770-71 (¶¶ 127-29) (2018) ("*Third Report and Order*").

FirstEnergy provided Verizon on June 7, 2018[30] and identified certain foundational flaws that lead me to conclude that FirstEnergy has not identified any such net material advantage.

31. As an initial matter, FirstEnergy failed to provide any quantifications or credible documentation to support the existence of any of the alleged advantages in the list. The sole material offered to Verizon was a draft license agreement.[31] But the terms of a draft license agreement are only to a limited degree relevant to an analysis of competitive neutrality. A draft agreement, by definition, contains a party's starting point in negotiations, and is not evidence of the actual negotiated terms adopted by contracting parties. Thus, a draft license agreement is only relevant to an analysis of competitive neutrality in that it provides an example of the terms and conditions FirstEnergy considers most favorable, although not necessarily achievable in practice.

32. FirstEnergy also failed to account for any disadvantages to Verizon as compared to its competitors. But any analysis of competitive neutrality must consider both burdens and benefits associated with the use of FirstEnergy's poles. As the Commission explained, "[a] failure to weigh, and account for, the different rights and responsibilities in joint use agreements could lead to marketplace distortions."[32] As a result, a proper calculation of a competitively neutral rental rate must consider the net difference between an ILEC and its competitors, accounting both for unique costs imposed on the ILEC and unique benefits given the ILEC, if any. FirstEnergy did not account for the unique pole ownership costs that increase Verizon's costs as compared to its competitors. It also did not factor in unique offsetting burdens imposed

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[30] *See* Compl. Ex. 29 at VZ00690 (Email from D. Karafa, FirstEnergy, to B. Trosper, Verizon (June 7, 2018)).

[31] *See* Compl. Ex. 13 at VZ00486-503 (Draft License Agreement).

[32] *Pole Attachment Order*, 26 FCC Rcd at 5335 (¶ 216 n.654).

on Verizon under the joint use agreements. For example, unlike licensees, Verizon must provide FirstEnergy every alleged "benefit" that FirstEnergy provides Verizon. In some cases, such as with a $1000 application preparation fee, the alleged "benefit" is not tied to the number of poles to which a party is attached.[33] In such cases, the value of any "advantage" to Verizon from the alleged benefit is directly offset by the cost of the reciprocal "disadvantage" to Verizon for not receiving the alleged benefit from FirstEnergy. The offset eliminates any net advantage to Verizon as compared to its competitors.

33. FirstEnergy also relies primarily on one-time operational differences that are incurred, if ever, when an entity first attaches to a pole. Some differences reflect only a different process followed by a licensee as compared to Verizon, and a difference in approach does not establish a difference in cost, value, or burden. But in some cases, the difference in approach imposes higher costs on Verizon as compared to its competitors. For example, Met-Ed and Penn Power apparently follow a so-called "cost-causer" approach with respect to make-ready for Verizon's competitors, meaning that they charge Verizon's competitors the actual cost of any make-ready that they perform for Verizon's competitors.[34] Met-Ed and Penn Power instead treat make-ready for Verizon as a reciprocal obligation, meaning that Verizon must incur the cost of make-ready that Met-Ed and Penn Power require and vice versa. This different approach to make-ready has imposed higher costs on Verizon than it would pay under the cost-causer

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[33] *See* Compl. Ex. 29 at VZ00690 (Email from D. Karafa, FirstEnergy, to B. Trosper, Verizon (June 7, 2018)); *see also* Compl. Ex. 14 at VZ00510 (Bell License, Art. XII(1)).

[34] Compl. Ex. 29 at VZ00690 (Email from D. Karafa, FirstEnergy, to B. Trosper, Verizon (June 7, 2018)); *see also* [redacted]. Penelec also apparently follows a cost-causer approach with respect to Verizon's competitors. [redacted] Verizon is treated comparably, as Penelec also charges Verizon for make-ready it performs for Verizon. Compl. Ex. A at VZ00025 (Mills Aff. ¶ 56).

approach that apparently applies to Verizon's competitors. For example, data from the 2014 to September 2019 time period shows that Verizon was required to incur the cost to replace 66 poles at Met-Ed's request and 594 poles at Penn Power's request, whereas Met-Ed replaced 3 poles at Verizon's request and Penn Power replaced 88 poles at Verizon's request during that same time period.[35] Thus, while Verizon was the "cost causer" for 91 pole replacements, Verizon incurred the cost to replace 660 poles—more than 7 times the number of pole replacements that Verizon requested. The difference in approach to make-ready is thus a competitive disadvantage for Verizon.

34. In addition, FirstEnergy has not quantified any of the differences on an annually recurring per-pole basis, which is critical when seeking to rationalize annually recurring per-pole rental rates to ensure competitive neutrality. For example, because Verizon is attached to 301,854 FirstEnergy poles (using the pole counts from FirstEnergy's invoices for 2018 rent), a one-time $1000 agreement preparation fee would have been fully paid for in one rental year for a per-pole charge of less than one cent.[36] Such an isolated, one-time fee cannot justify charging a higher annually recurring rental rate, let alone one that has averaged [redacted] more per pole than the new telecom rate applicable to Verizon's competitors.

35. These and other flaws in FirstEnergy's list of alleged competitive advantages lead me to conclude that FirstEnergy will not be able to justify charging Verizon a rental rate that is higher than a properly calculated new telecom rate. I have nonetheless calculated rates using the pre-existing telecom rate formula, which the Commission set as a "hard cap" on the rental rates

[35] Compl. Ex. A at VZ00026-27 (Mills Aff. ¶¶ 59-60).

[36] $1000 / 301,854 = $0.003; *see also* Compl. Ex. 14 at VZ00512 (Bell License, Art. XII(1)).

that FirstEnergy may charge Verizon.[37] My analysis shows that FirstEnergy has charged Verizon [redacted] more every year than it could charge using properly calculated per-pole pre-existing telecom rates. As a result, there are no circumstances under which FirstEnergy could lawfully charge the contract rates.

36. My pre-existing telecom rate calculations are included with my new telecom rate calculations in Exhibits C-1 (Met-Ed), C-2 (Penelec), and C-3 (Penn Power). The pre-existing telecom formula differs from the new telecom formula in that it does not include the 0.66 cost allocator when determining the annual cost of pole ownership. As a result, a properly calculated pre-existing telecom rate is approximately 50 percent higher than a properly-calculated new telecom rate. As shown in Exhibits C-1 through C-3, I calculate the following pre-existing telecom rates for Verizon's use of FirstEnergy's poles:

Pre-Existing Telecom Rates (per pole)								
Rental Year Data from	**2011** 2010	**2012** 2011	**2013** 2012	**2014** 2013	**2015** 2014	**2016** 2015	**2017** 2016	**2018** 2017
Met-Ed	$12.57	$14.96	$15.26	$7.61	$14.16	$13.32	$14.47	$18.49
Penelec	$9.74	$10.29	$10.89	$7.89	$10.54	$10.88	$11.35	$15.90
Penn Power	$11.06	$12.83	$12.90	$12.44	$13.54	$14.24	$13.75	$16.94

37. These pre-existing telecom rates, which average $12.75 per pole and set the upper bound on a just and reasonable rate, are [redacted] average per-pole effective rate that FirstEnergy continues to demand from Verizon. Verizon has thus paid effective rates averaging [redacted] times the pre-existing telecom rates during the applicable statute of limitations, for an average annual per-pole overpayment above the "hard cap" set by the *Third Report and Order* of [redacted] per pole[38]:

[37] *Third Report and Order*, 33 FCC Rcd at 7771 (¶ 129).

[38] [redacted] per pole - $12.75 per pole = [redacted] per pole.

	Average Per-Pole Contract Rate (2011-2018)	Average Per-Pole Pre-Existing Telecom Rate (2011-2018)	Average Contract Rate Compared to Average Pre-Existing Telecom Rate
Met-Ed	[redacted]	$13.86	[redacted] times
Penelec	[redacted]	$10.94	[redacted] times
Penn Power	[redacted]	$13.46	[redacted] times
Average	[redacted]	**$12.75**	[redacted] **times**

38. I also calculated the net rental amount that FirstEnergy charged and collected from Verizon in excess of this "hard cap" on the rates that FirstEnergy may charge Verizon. My overpayment calculation is included in Exhibit C-6.

39. I completed this calculation in the same manner described above with respect to new telecom rates. As a result, I first calculated the net rental amounts that result from the application of proportional pre-existing telecom rates to both Verizon's use of FirstEnergy's poles and FirstEnergy's use of Verizon's poles. My calculations of the proportional pre-existing telecom rates that would apply to FirstEnergy's use of Verizon's poles if the pre-existing telecom rates from Exhibits C-1 through C-3 apply to Verizon's use of FirstEnergy's poles are included in Exhibit C-5.

40. I then compared the net rental amounts that Verizon paid FirstEnergy to the amounts that Verizon would have paid FirstEnergy if rent was set for Verizon and FirstEnergy at proportional pre-existing telecom rental rates. My calculation shows that, during the applicable statutes of limitations, FirstEnergy collected from Verizon over [redacted] to date above the "hard cap" set by the pre-existing telecom rate formula:

Refund Calculation: Pre-Existing Telecom Rates

Rental Year	Net Rent Verizon Paid FirstEnergy	Net Rent at Pre-Existing Telecom Rates	Verizon's Overpayment to FirstEnergy
2011 (172 days)	[redacted]	$804,674	[redacted]
2012		$2,125,067	
2013		$1,796,895	
2014		$420,562	
2015		$1,088,366	
2016		$1,588,962	
2017		$1,422,144	
2018		$1,951,263	
2019 (to date)		$252,243	
Total	[redacted]	$11,450,175	[redacted]

41. For the July 12, 2011 through 2018 rental period (7.47 years) paid in full to date, these overpayments produce an average annual overpayment above pre-existing telecom rates of over [redacted] per year.[39]

Mark S. Calnon, Ph.D.

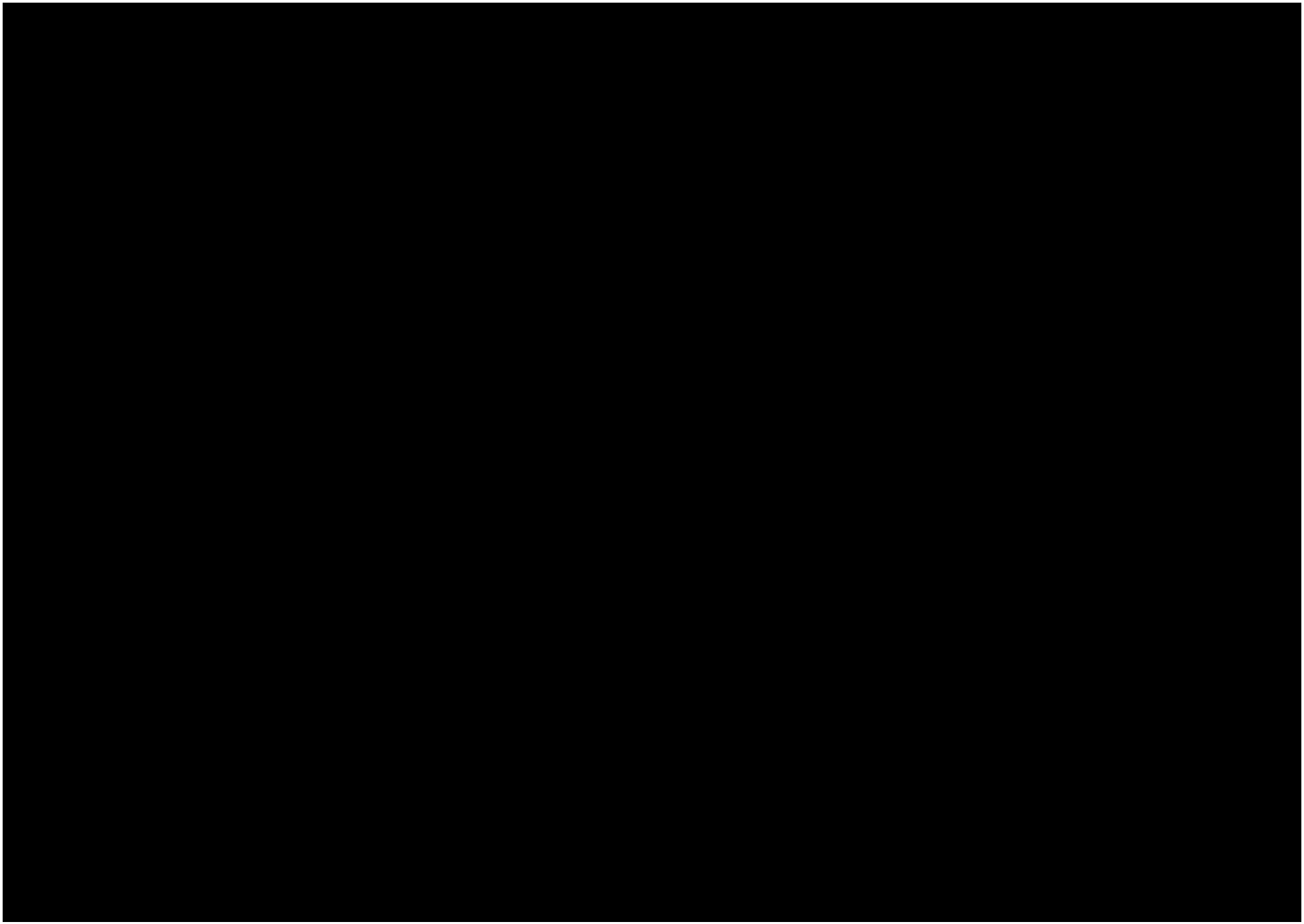
Sworn to before me on
this 19th day of November, 2019

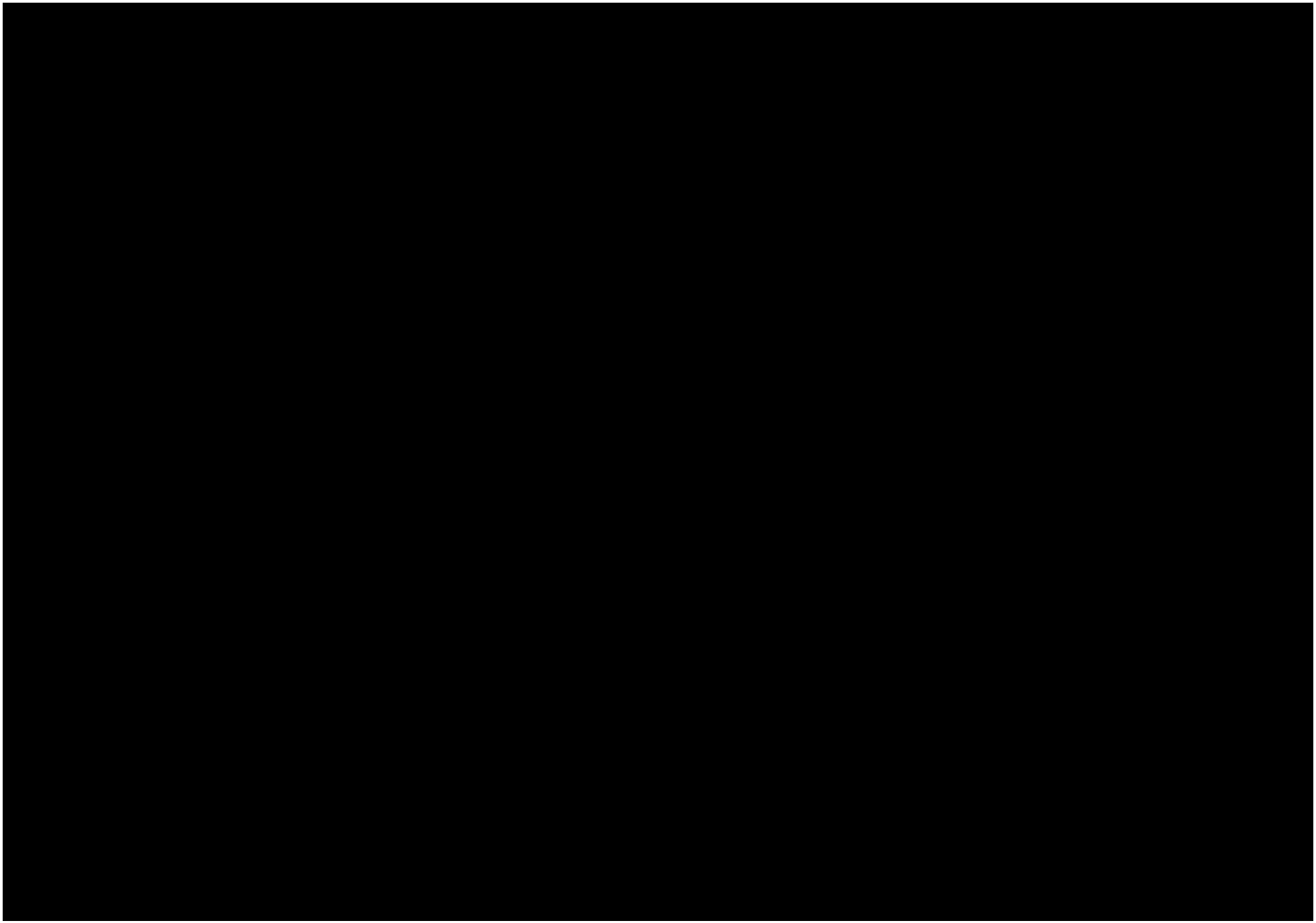
Notary Public

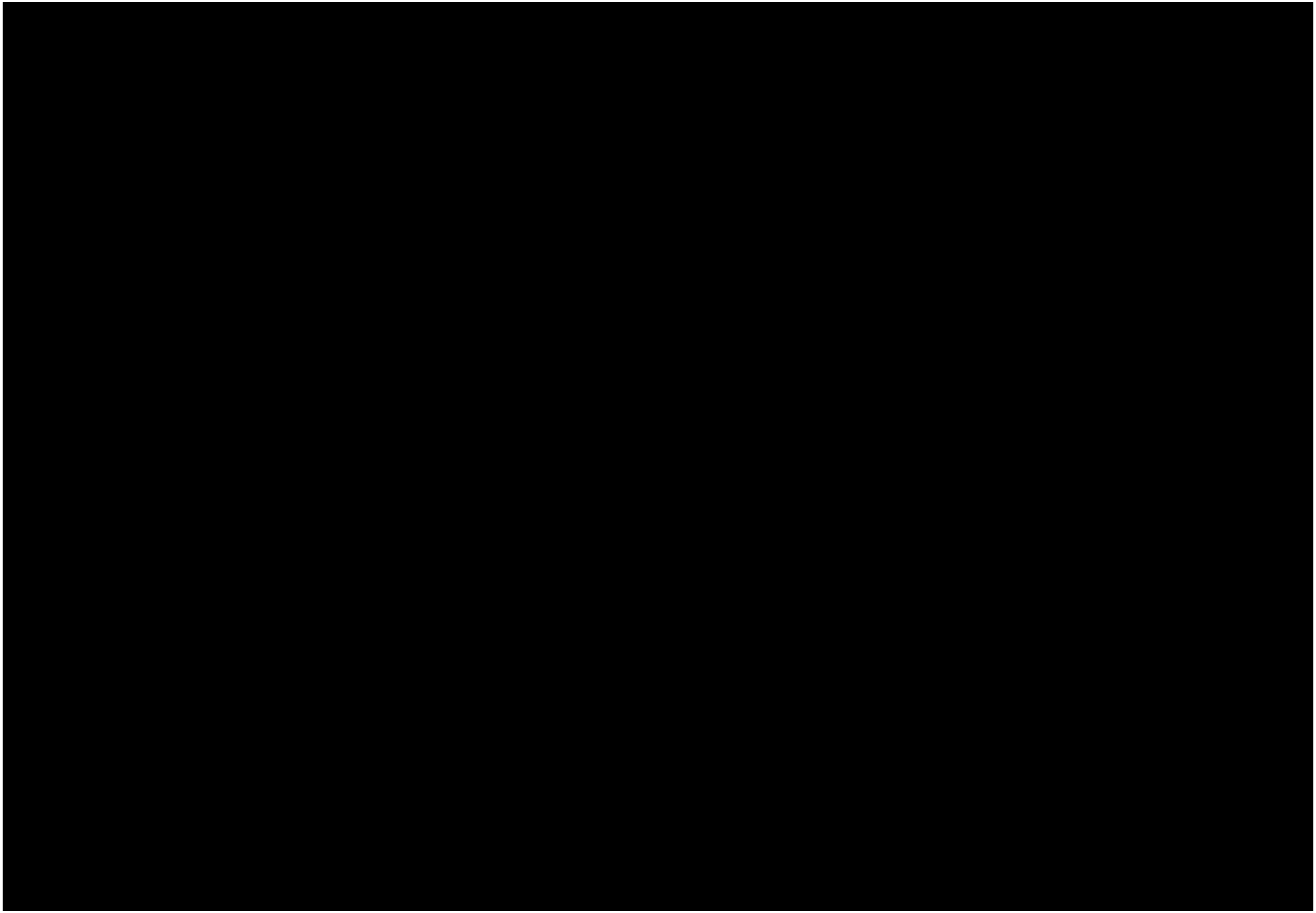
COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
KEVIN DAVID MOONEY, Notary Public
Quakertown Borough, Bucks County
My Comm. Expires October 07, 2020

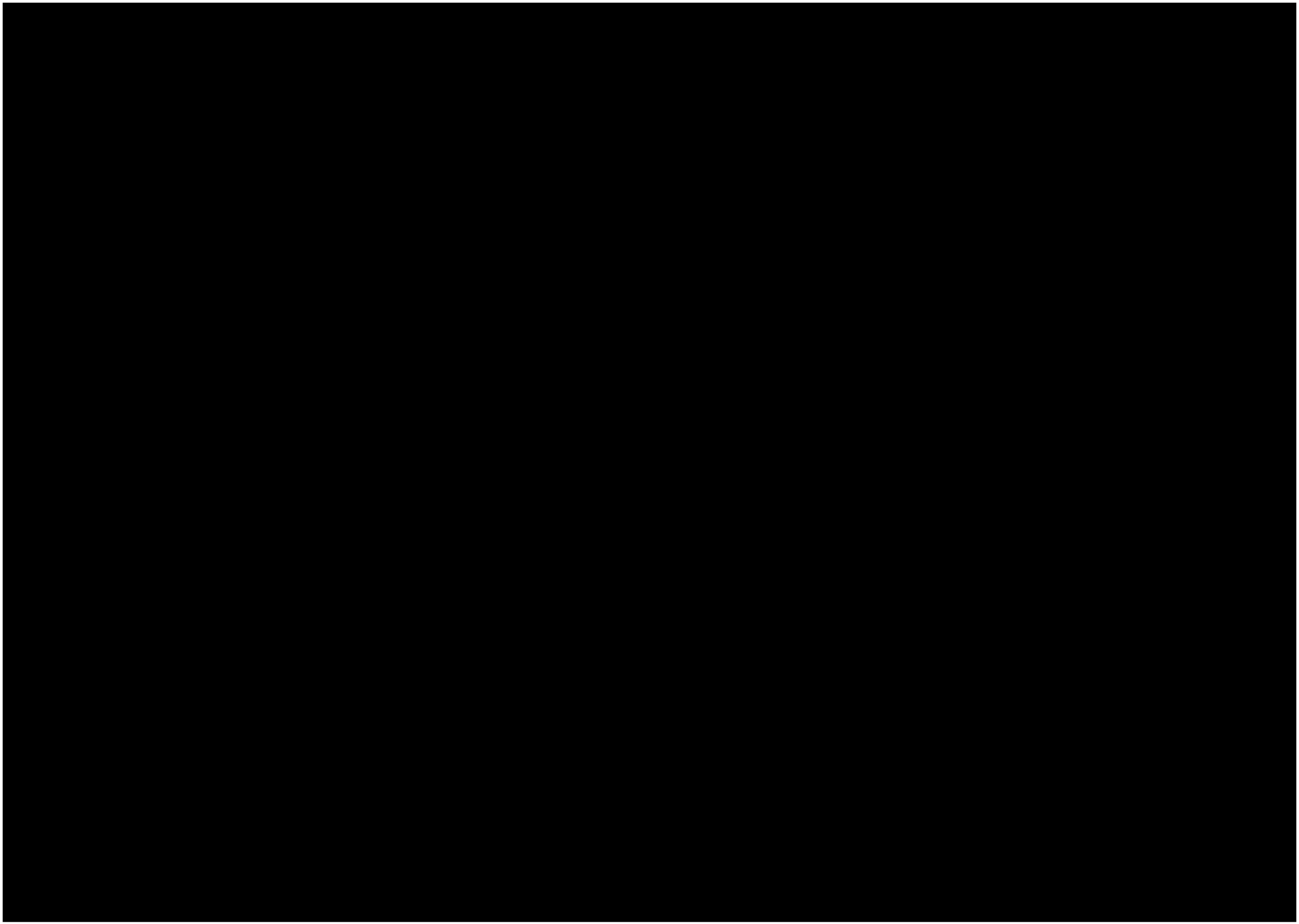
[39] [redacted] of the [redacted] overpayment is attributable to the 2011 to 2018 rental years. [redacted] / 7.47 years = [redacted] average annual overpayment.

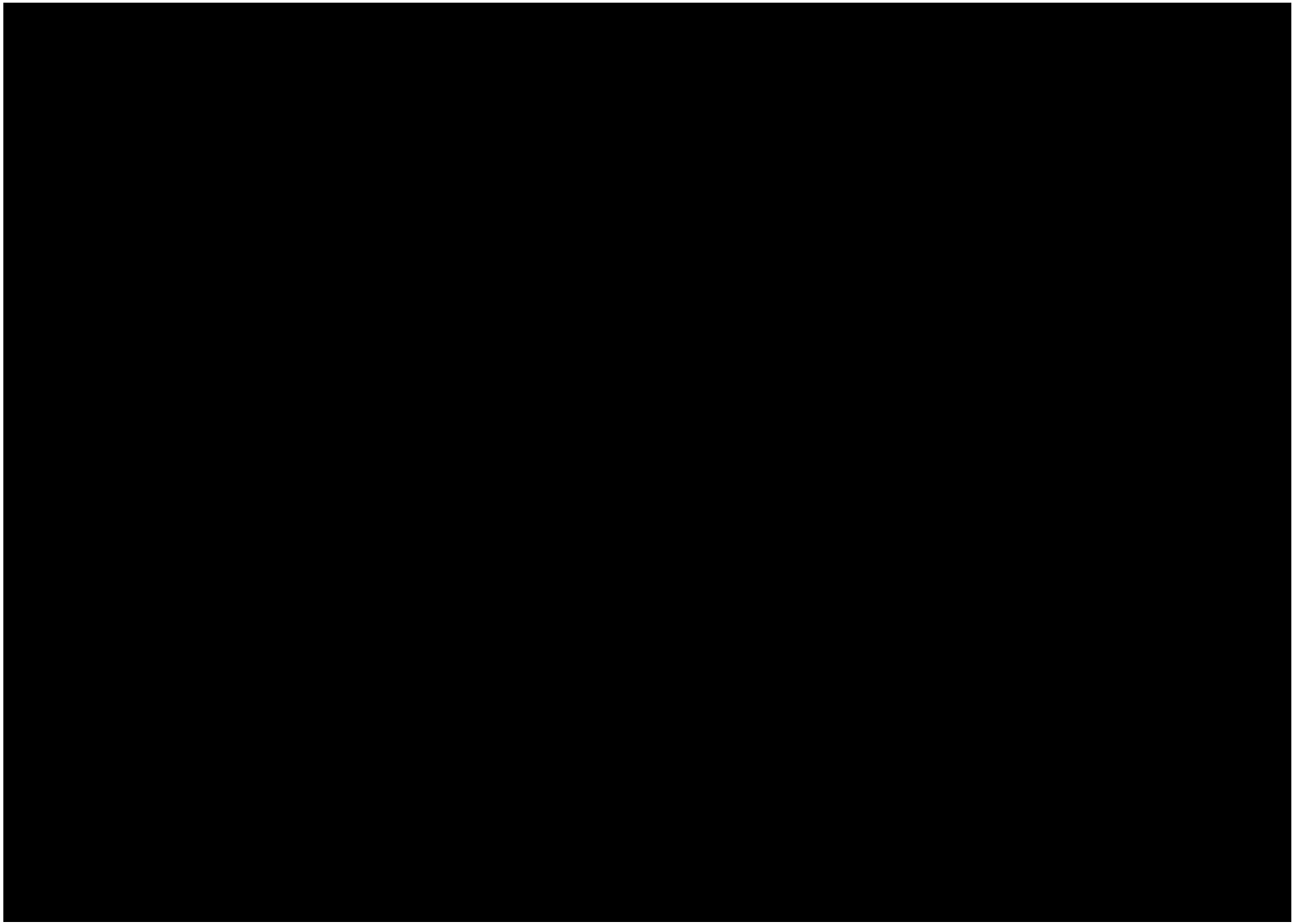
Exhibit C-1

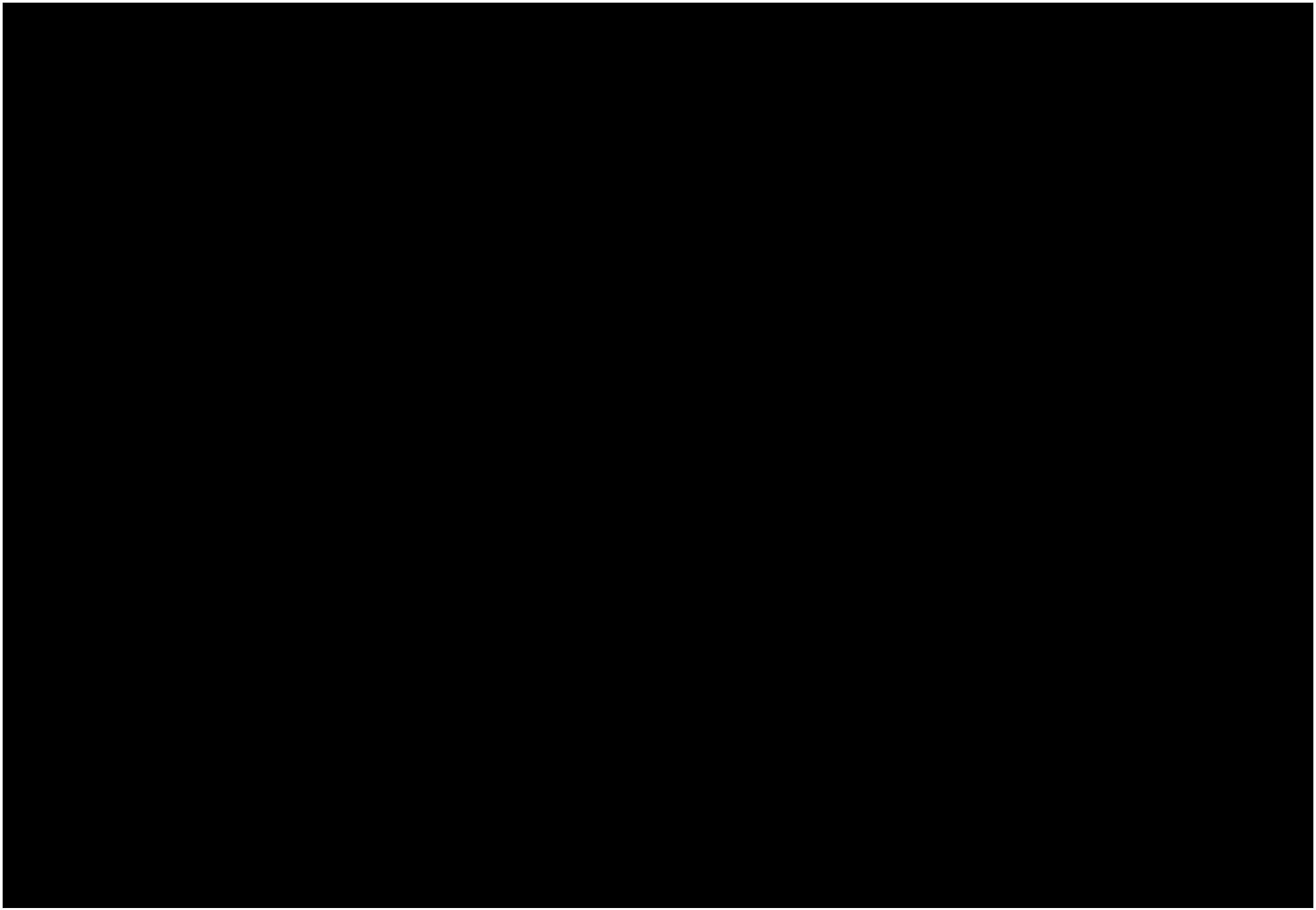


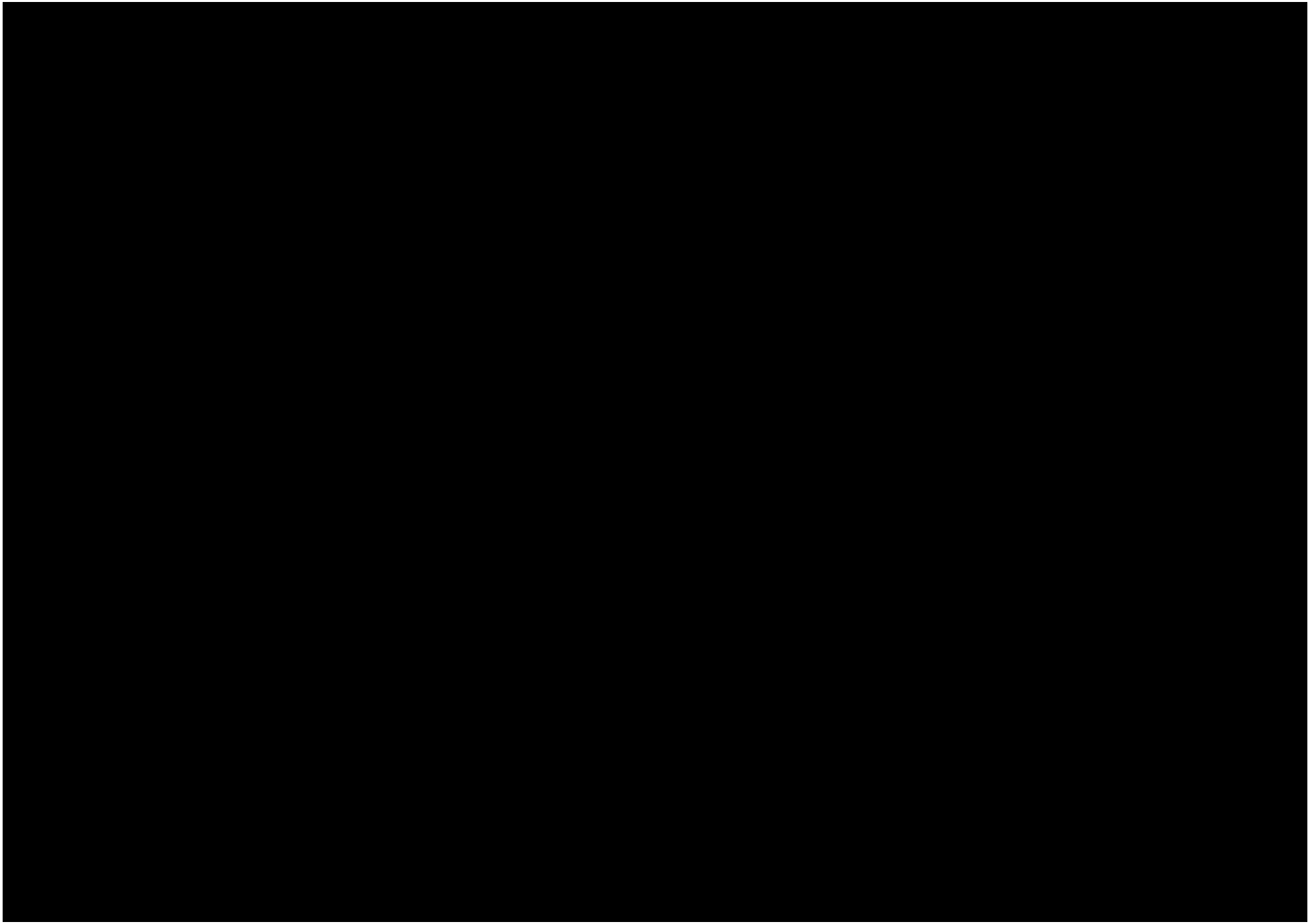


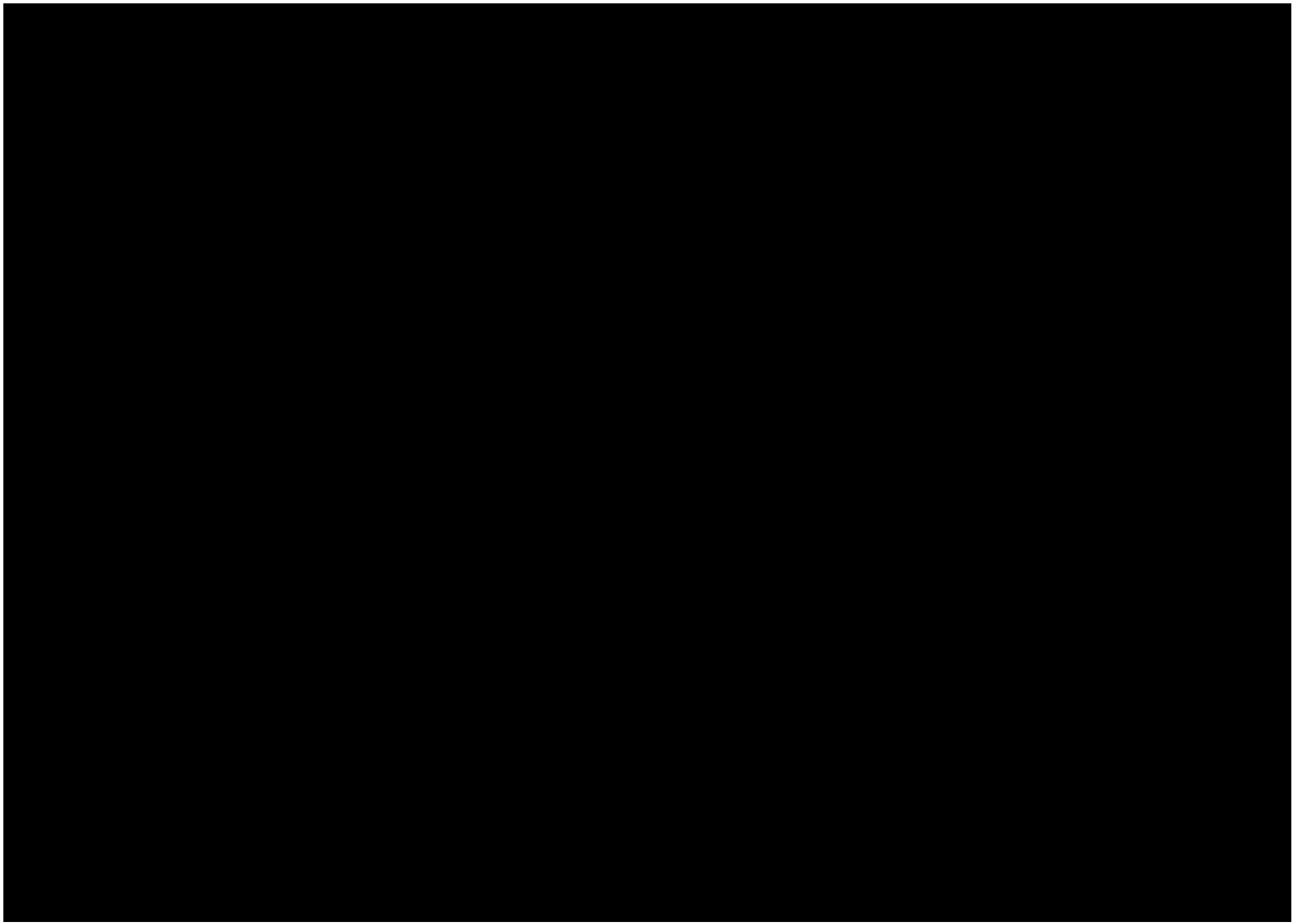












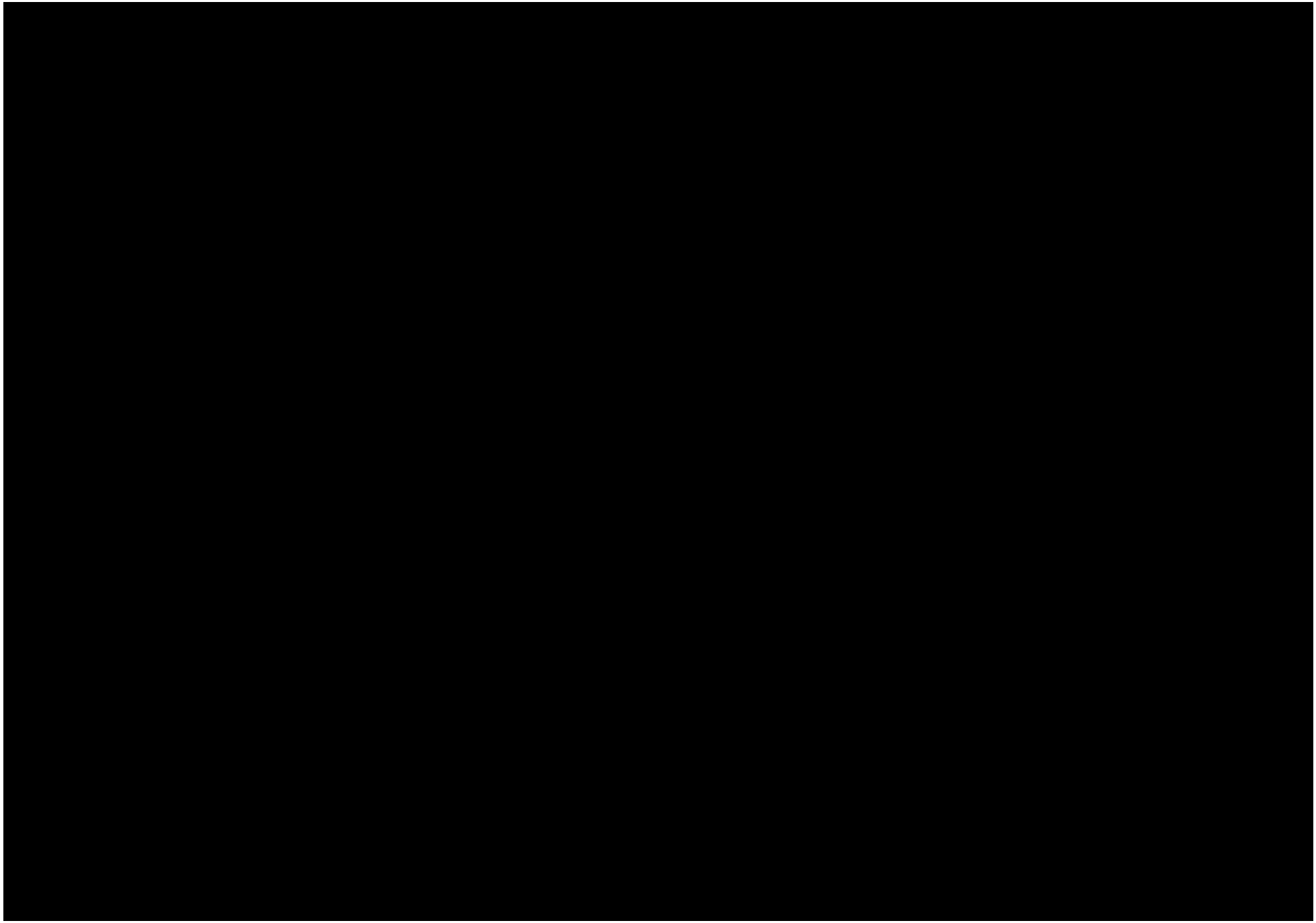
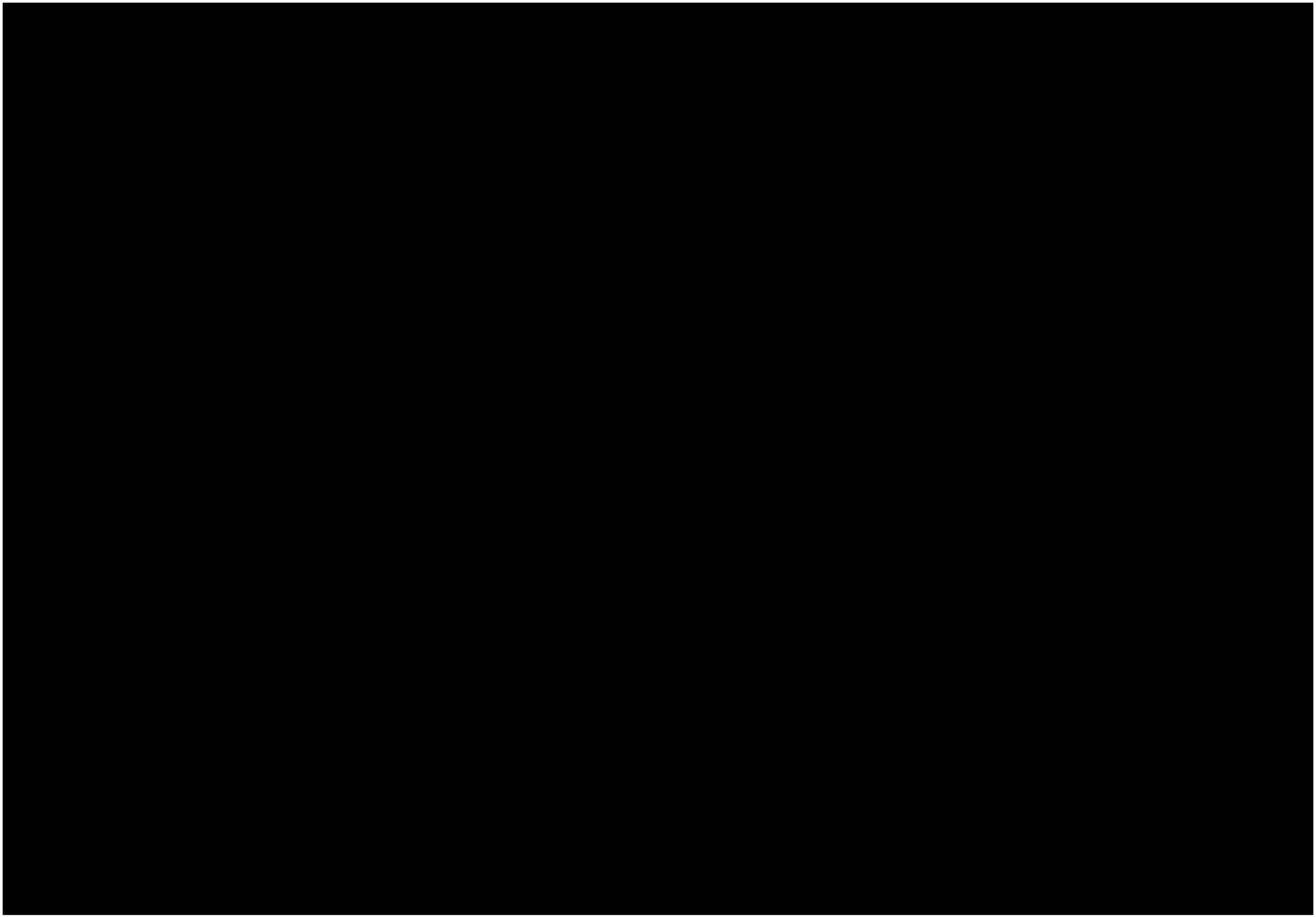
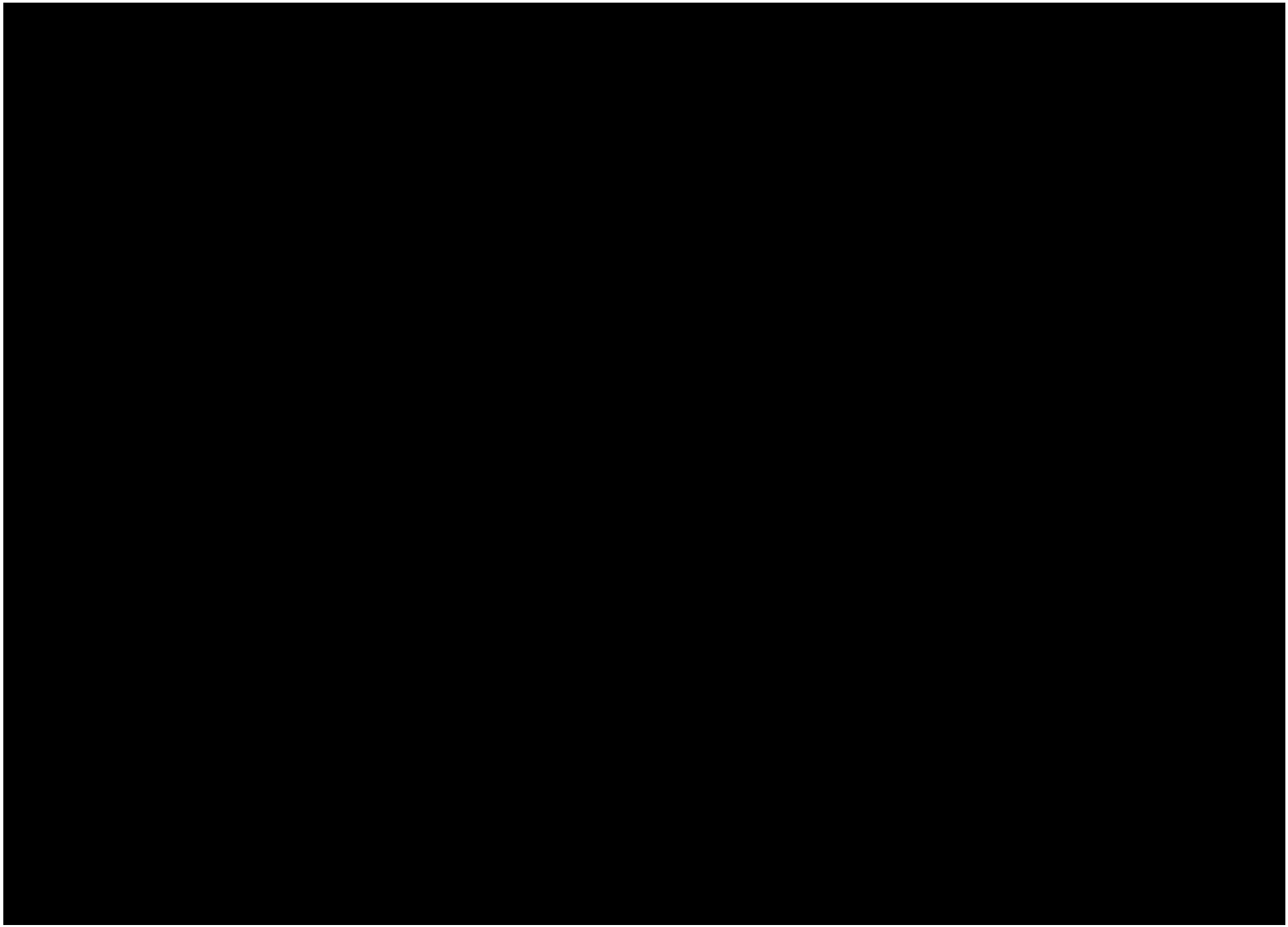
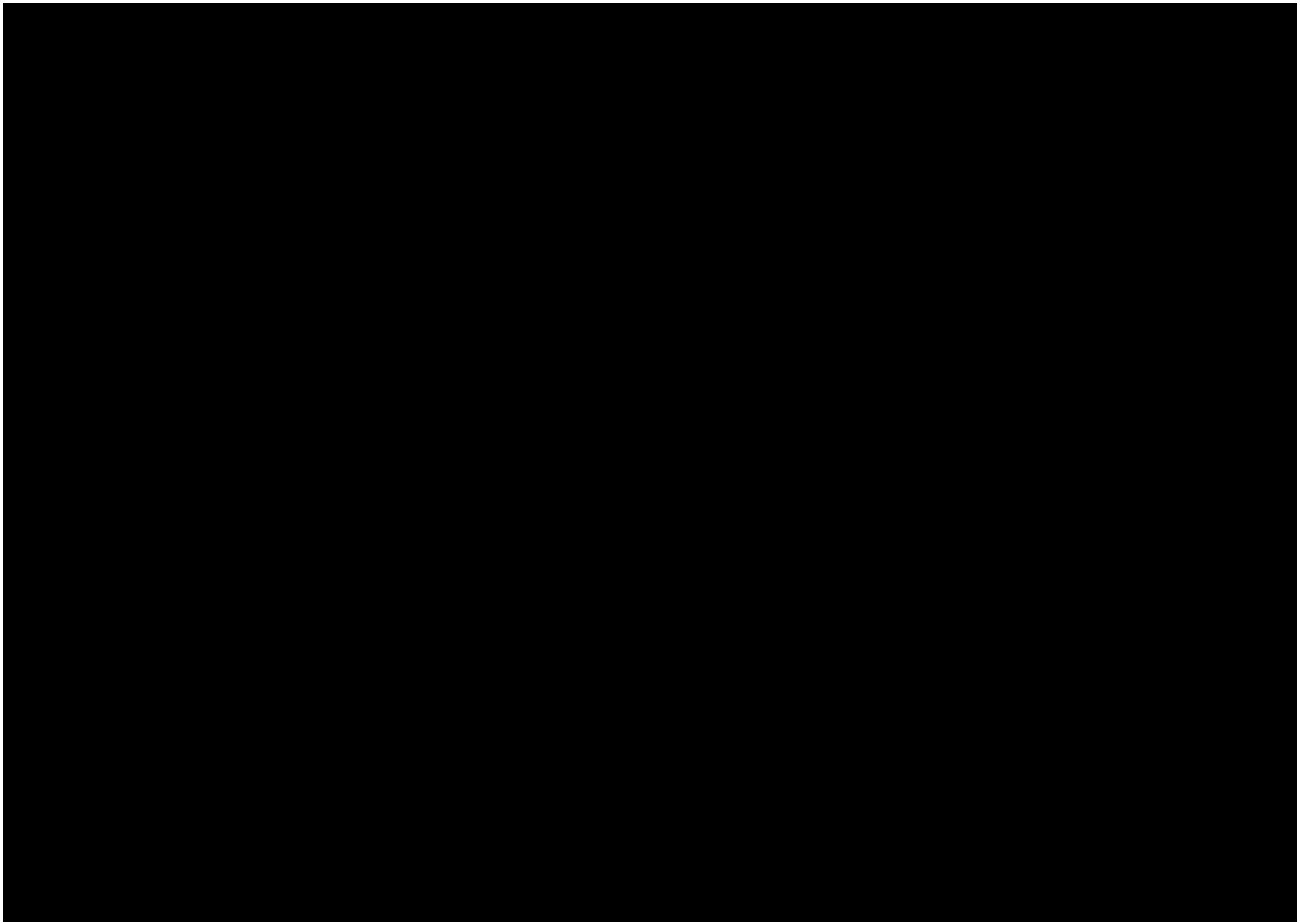
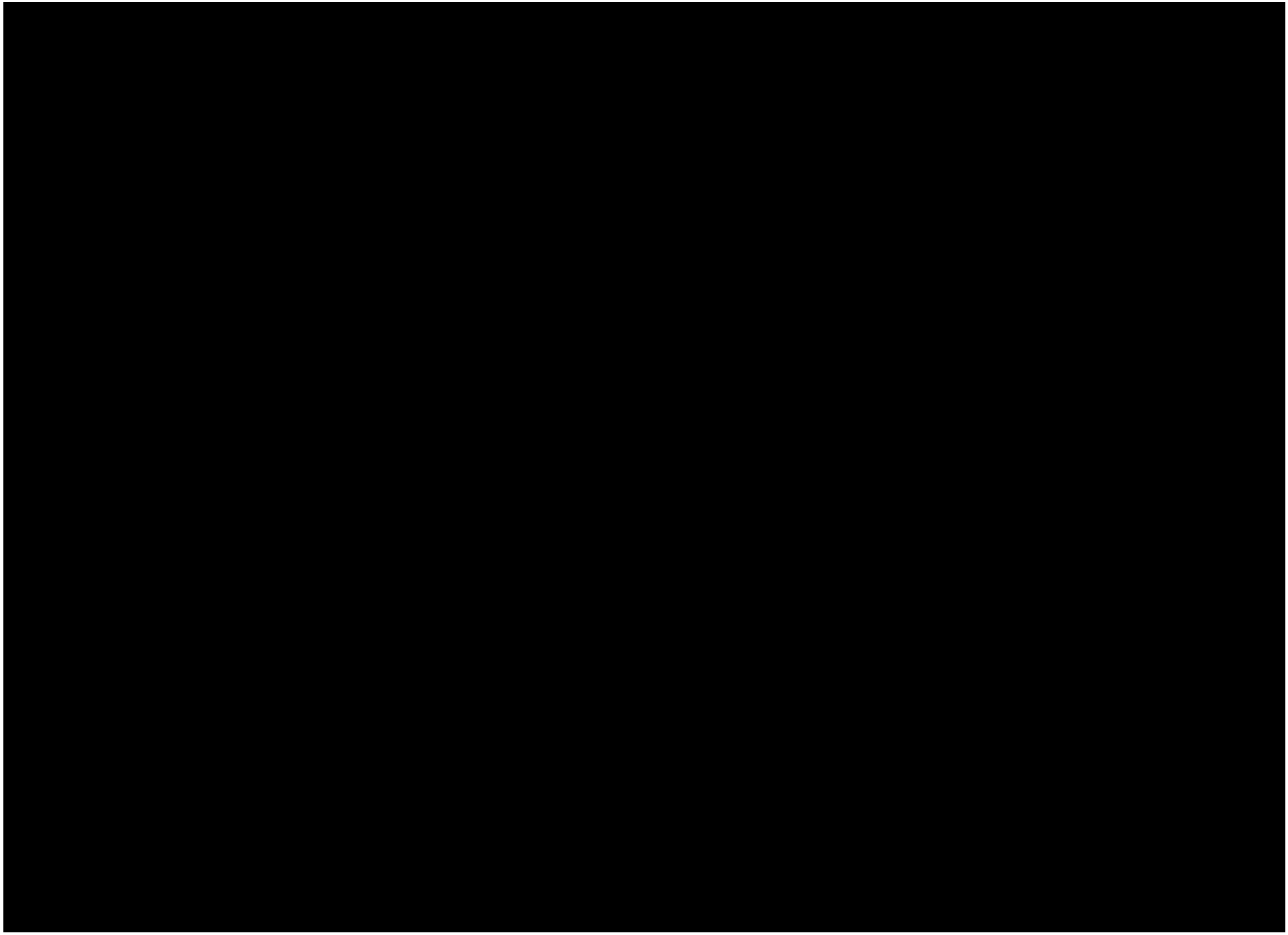


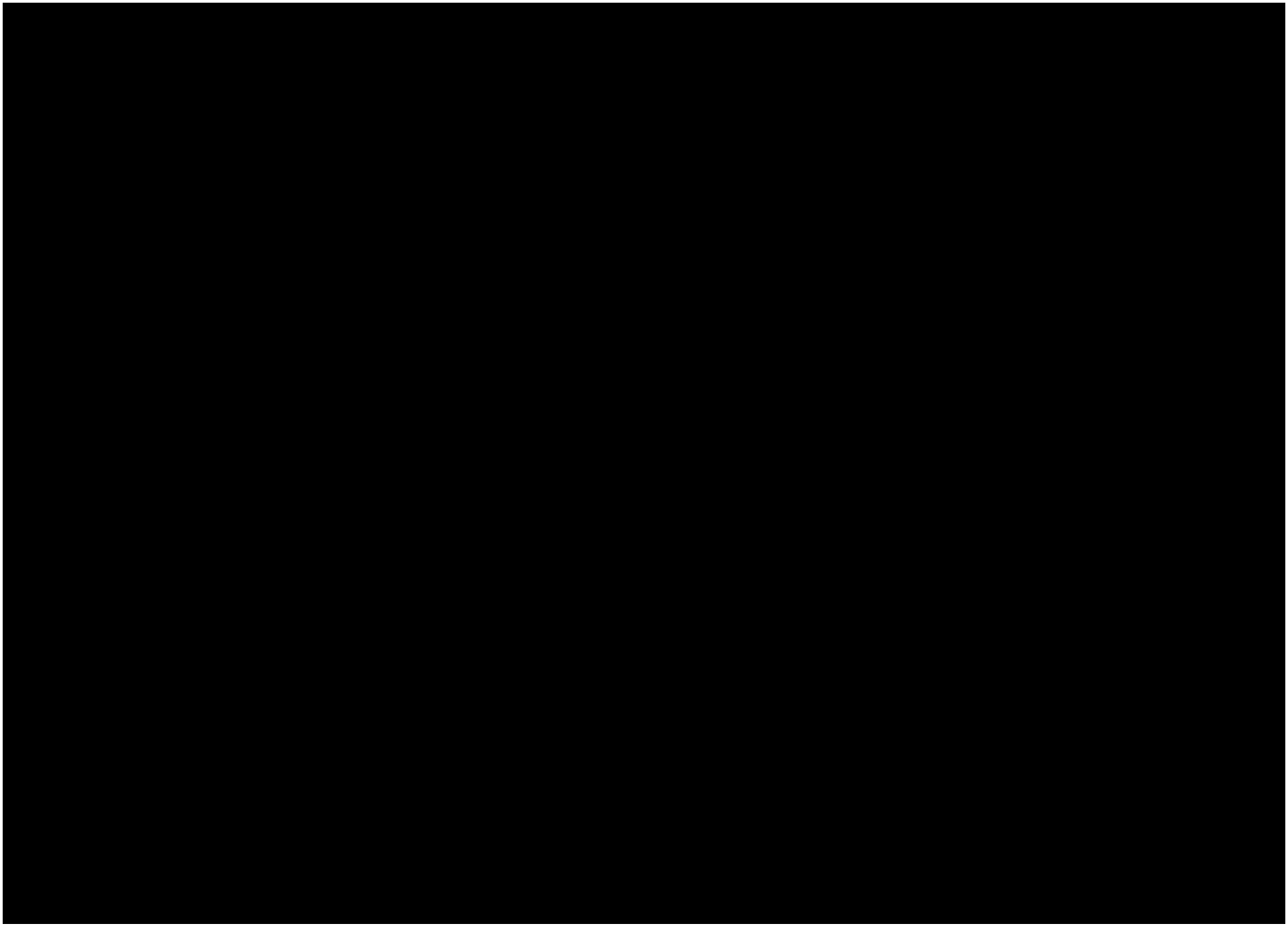
Exhibit C-2

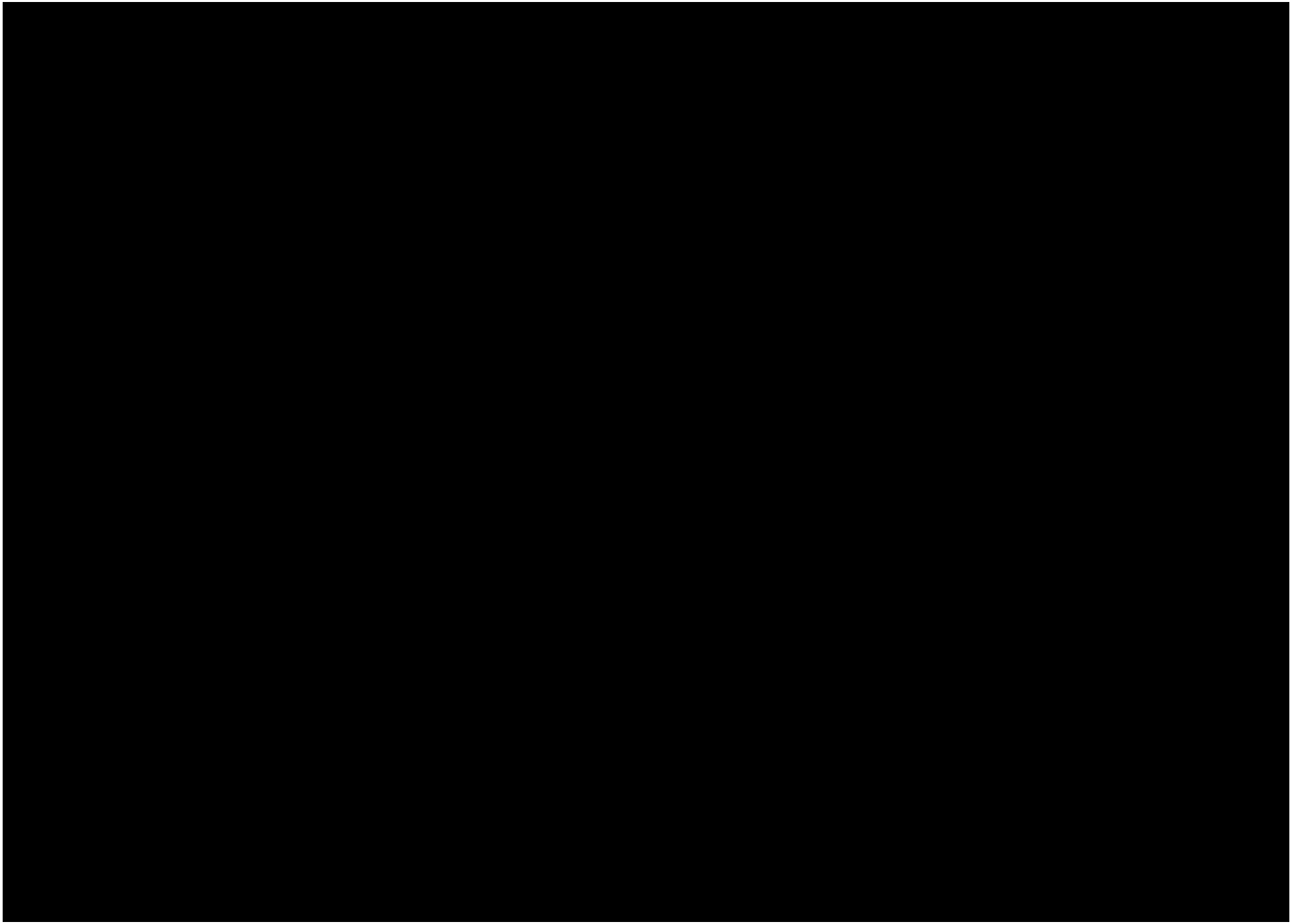


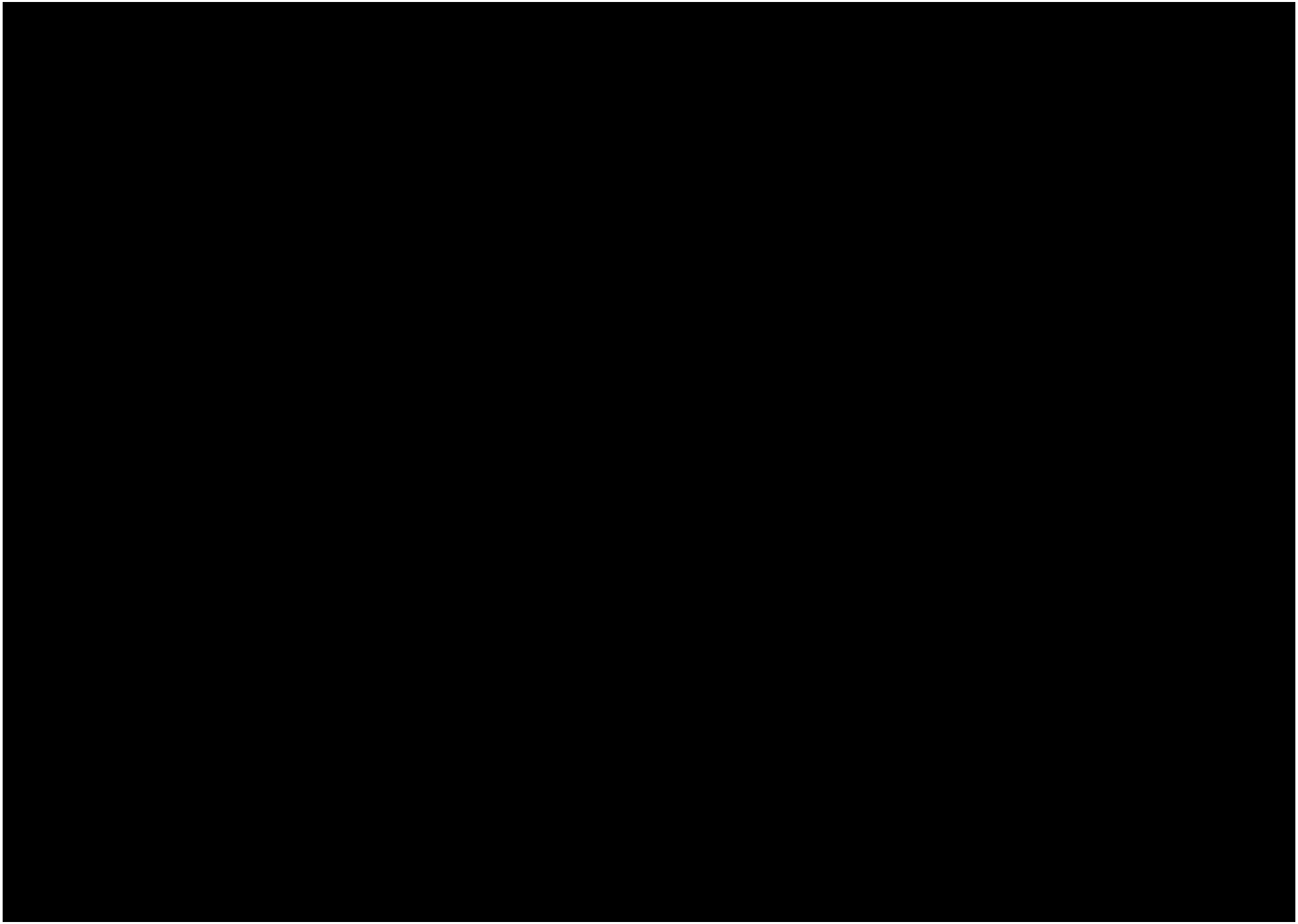


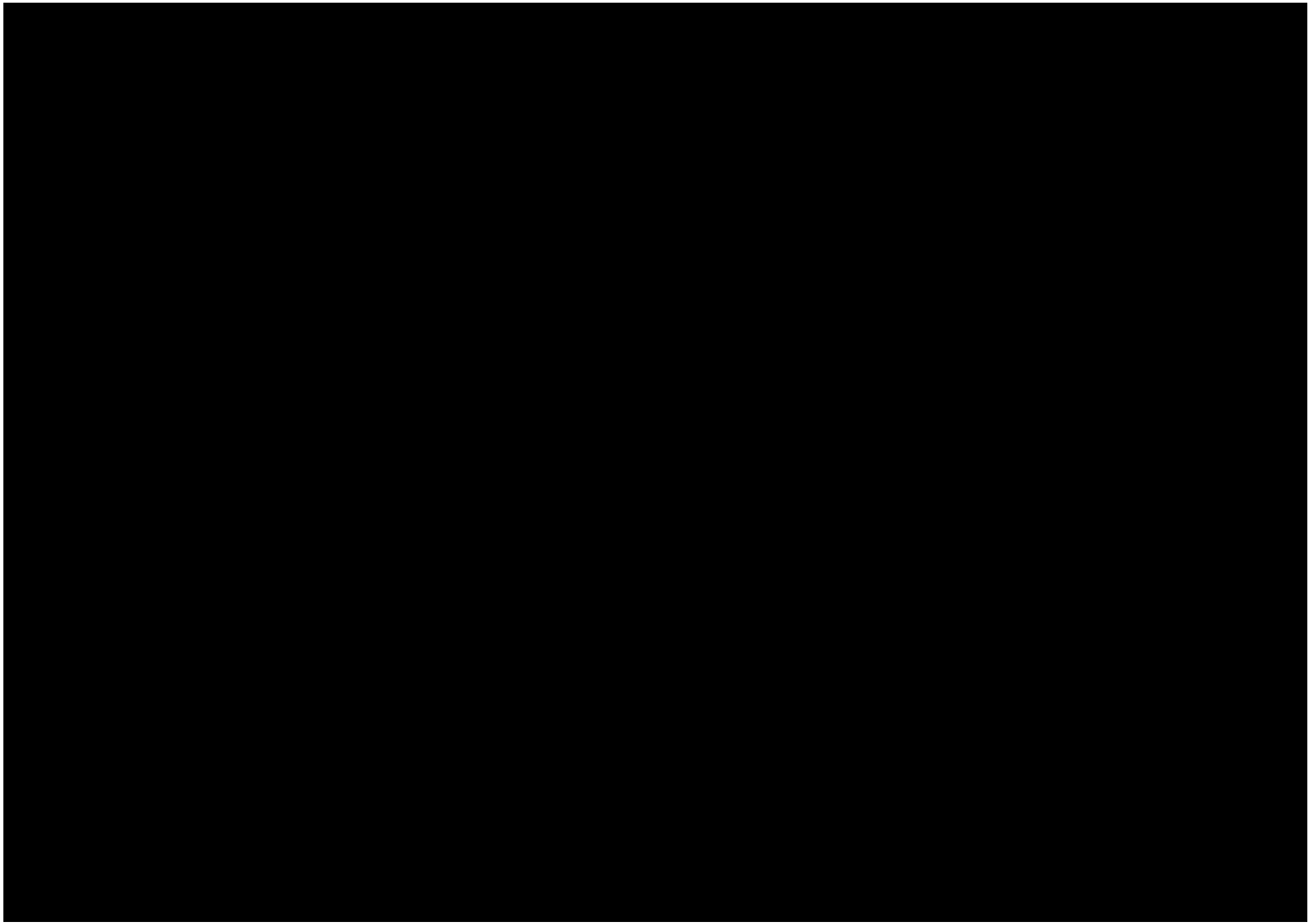












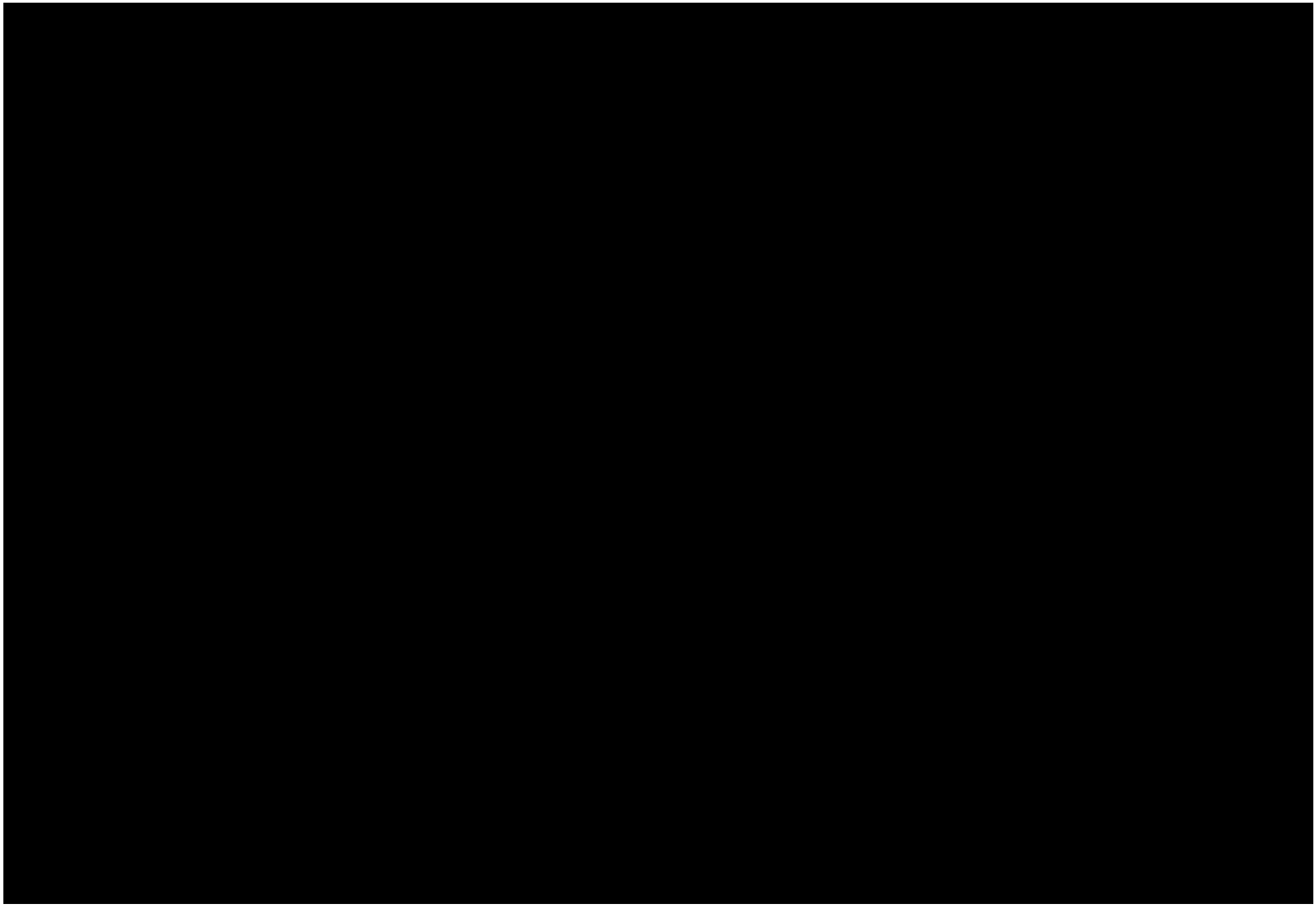
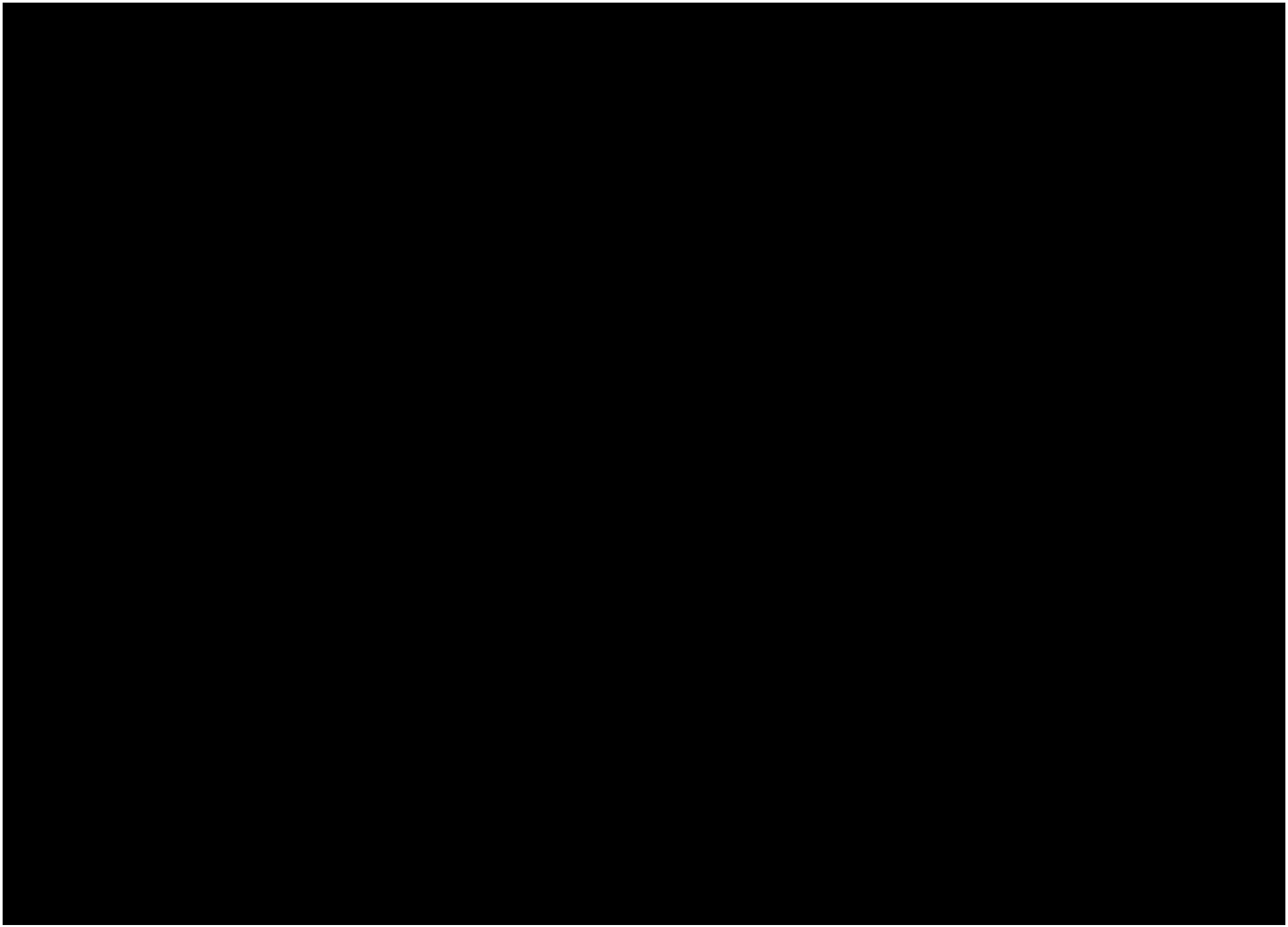
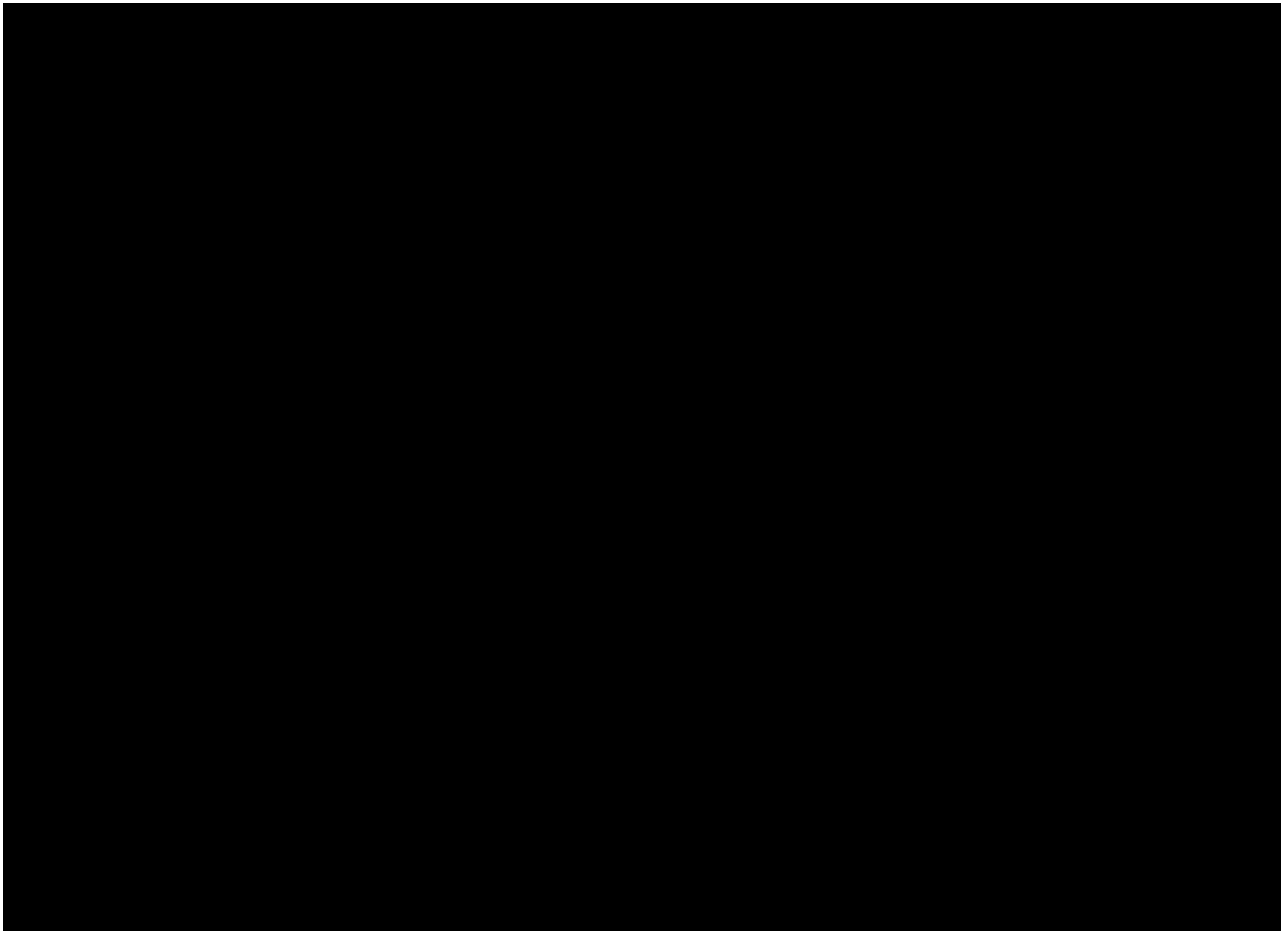
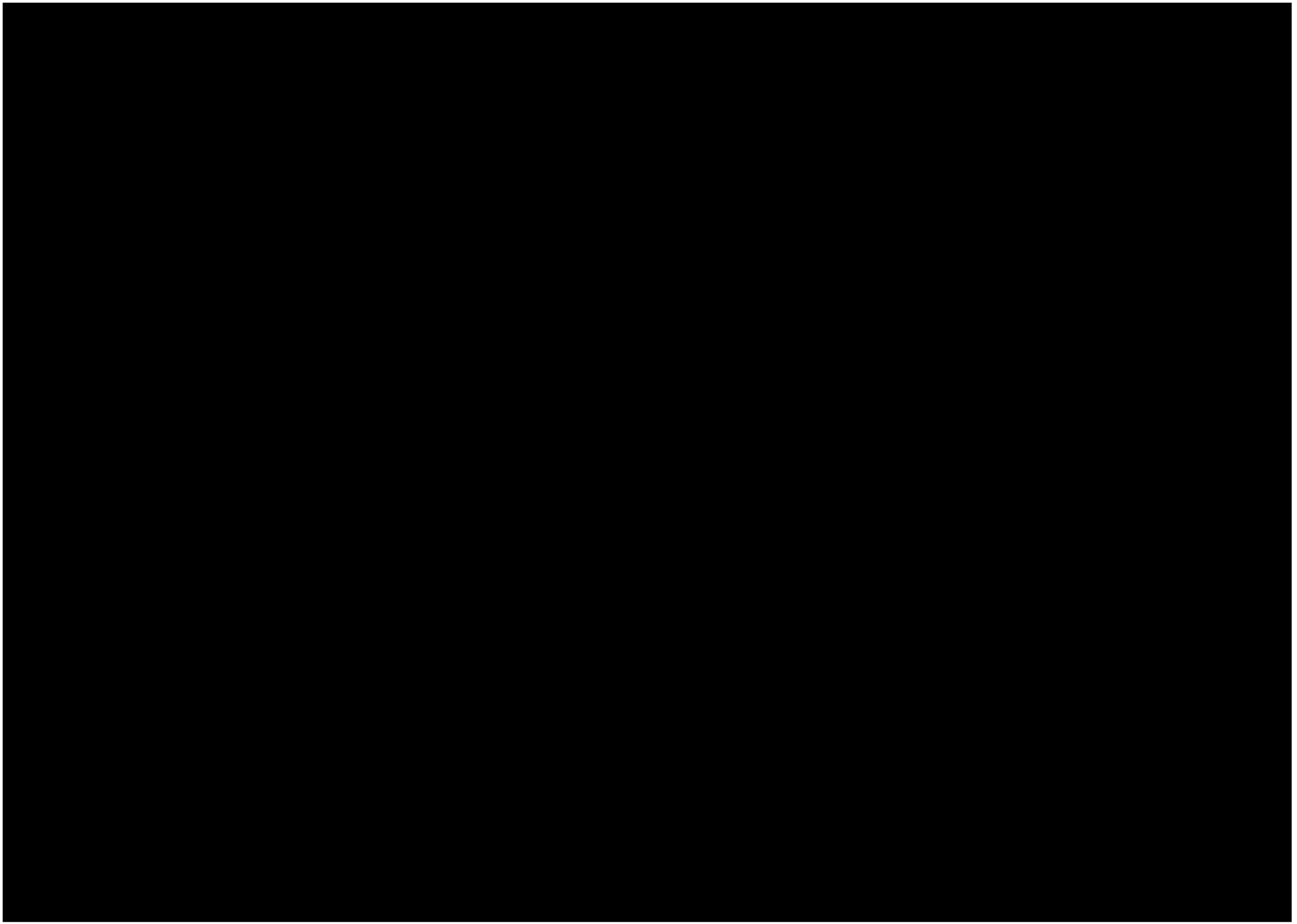
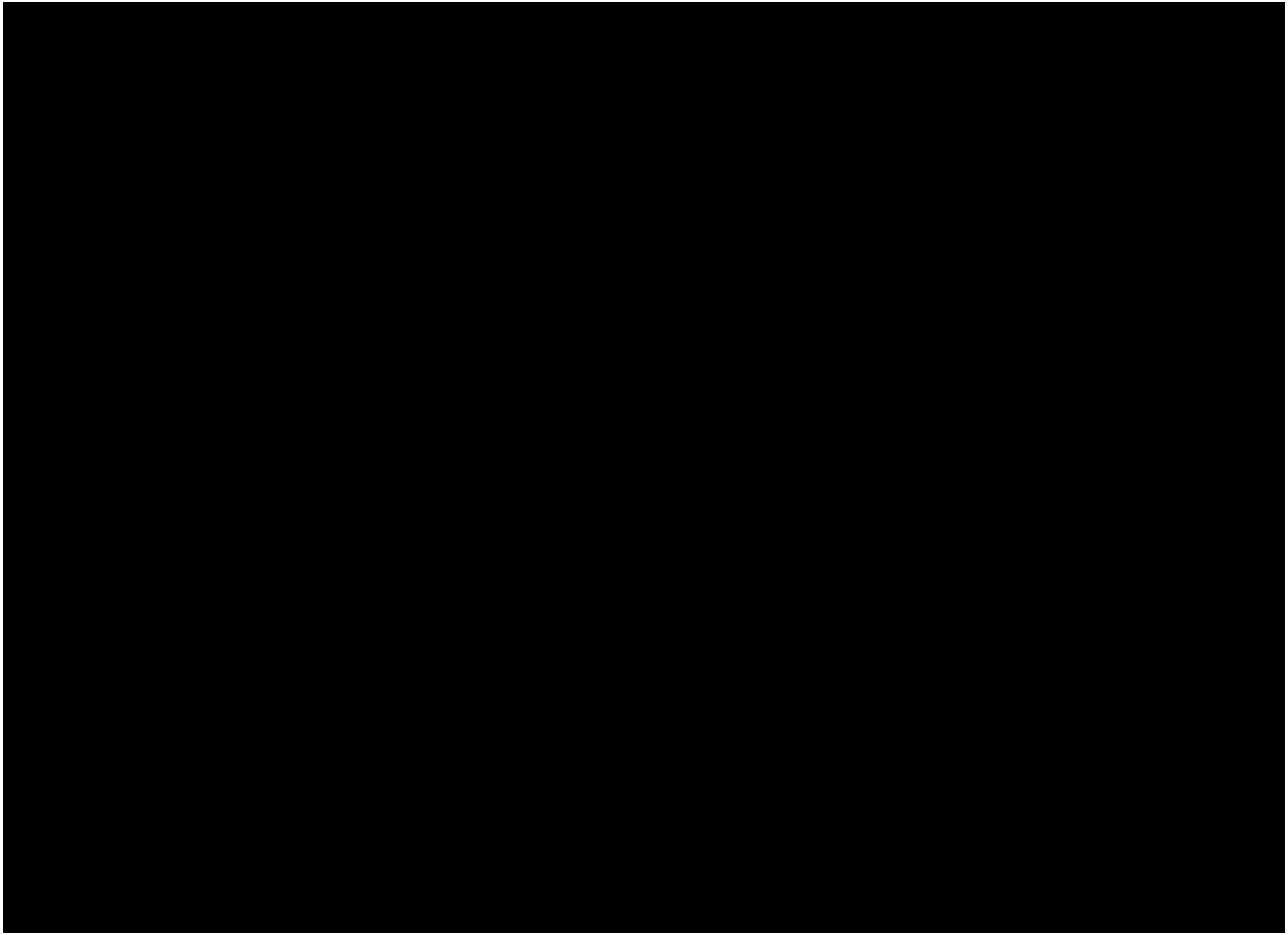


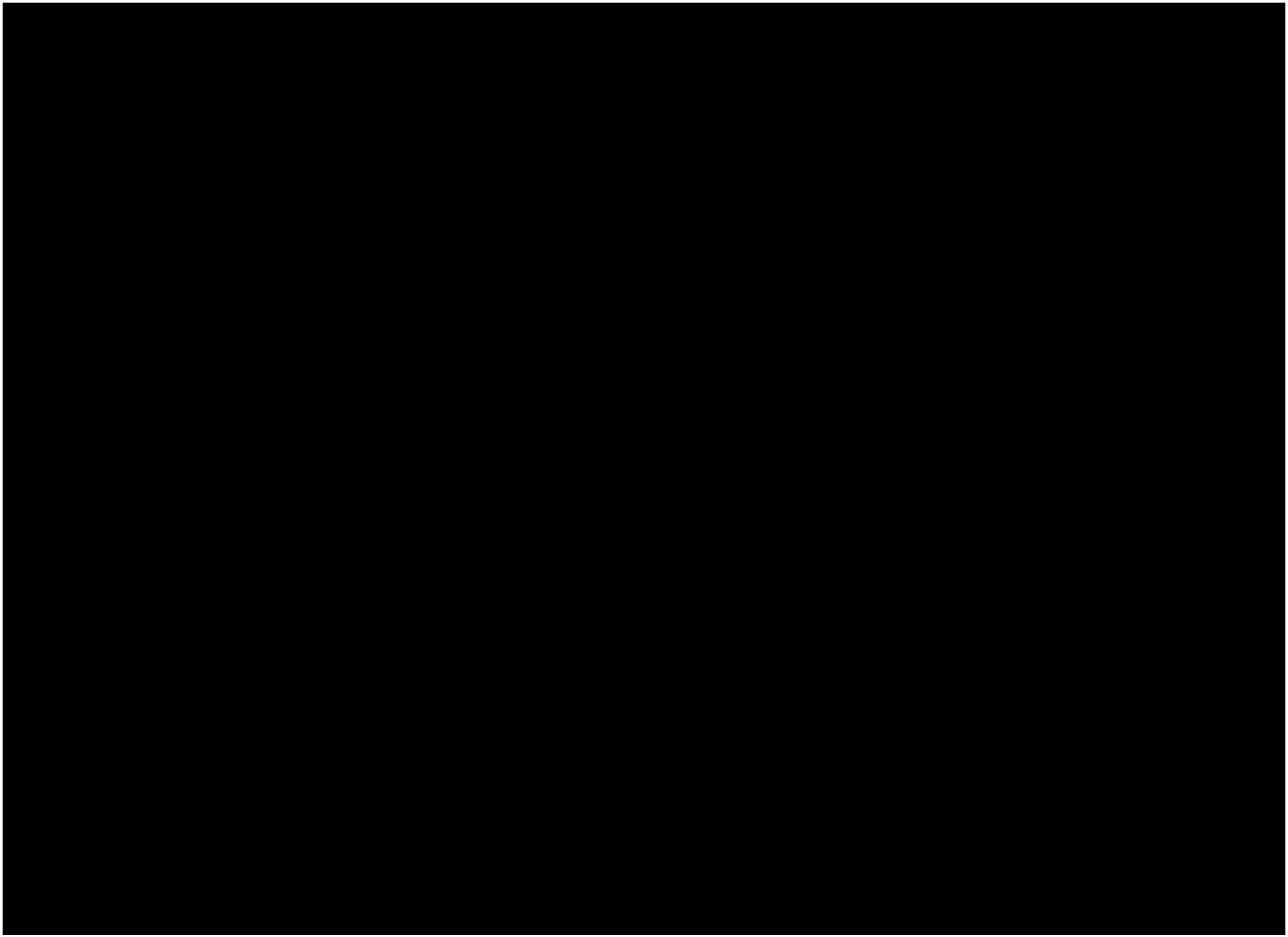
Exhibit C-3

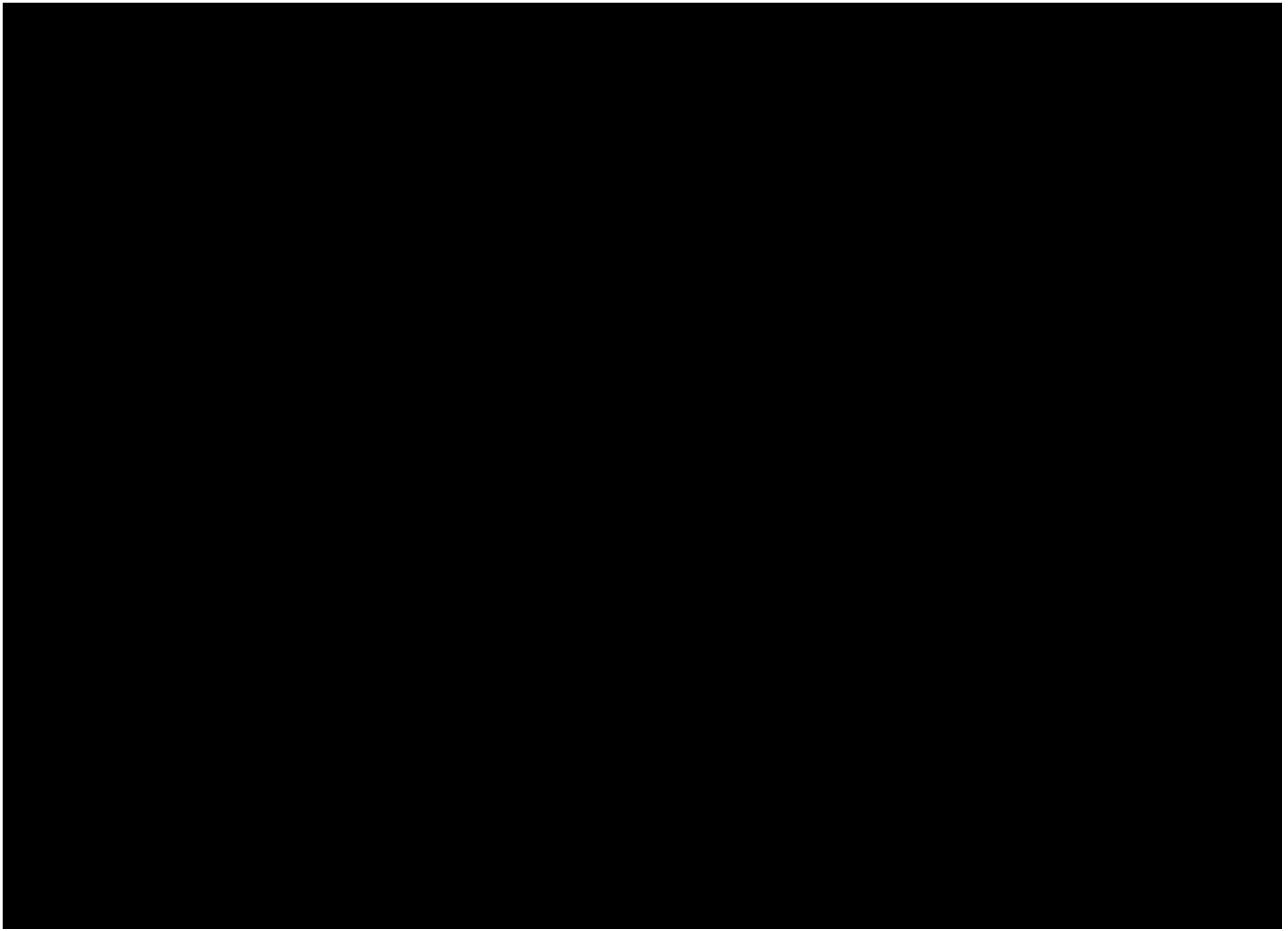


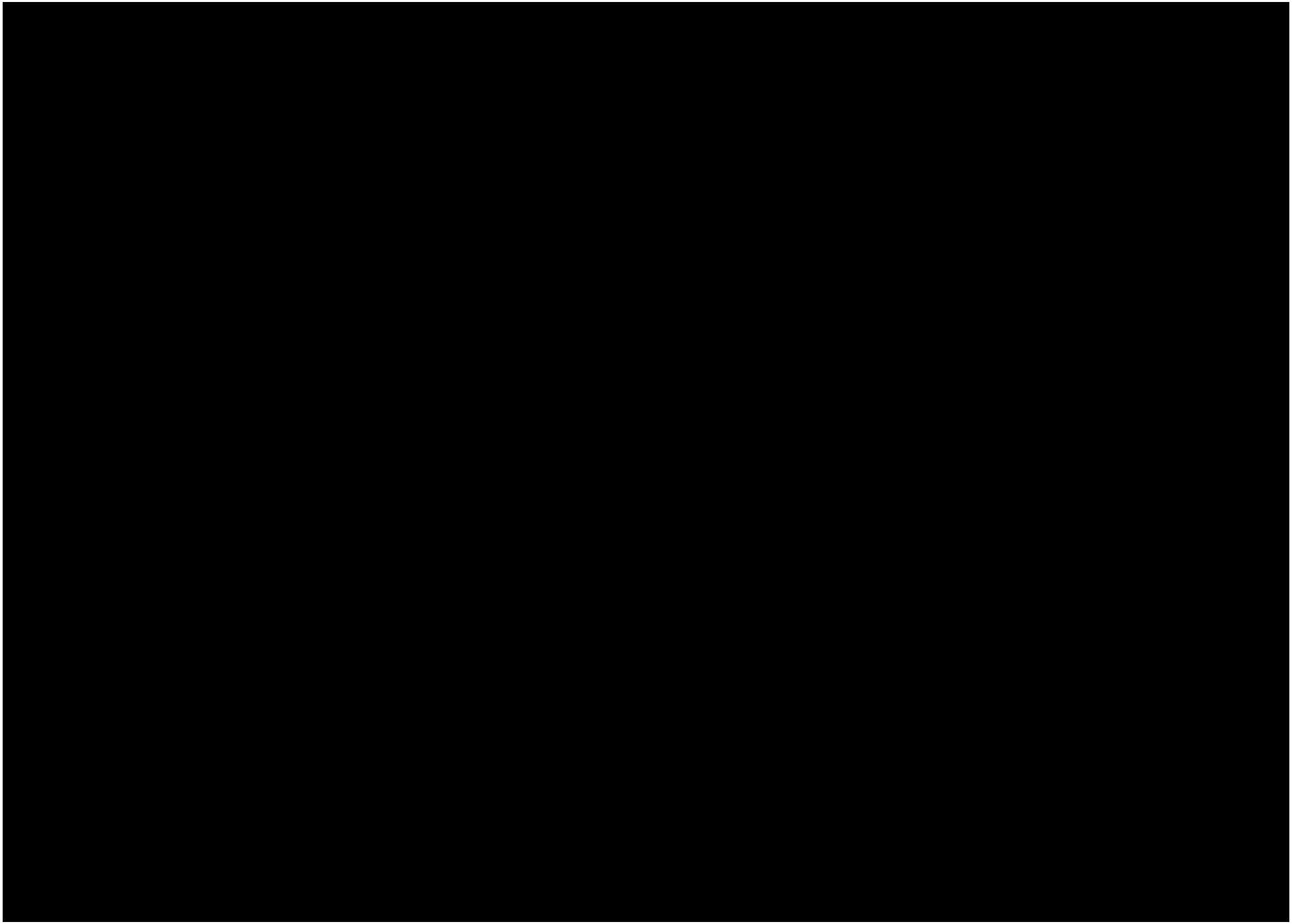


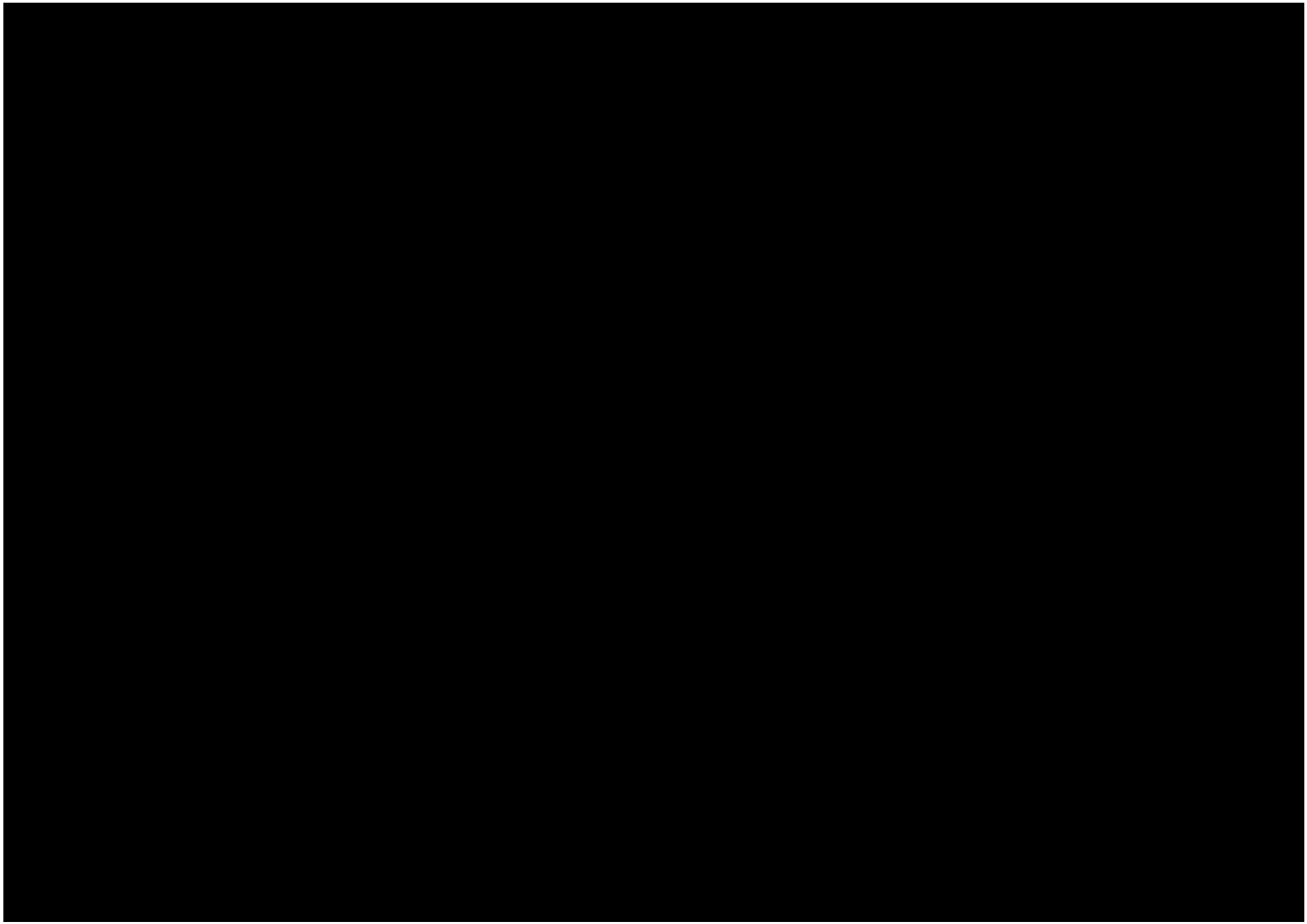












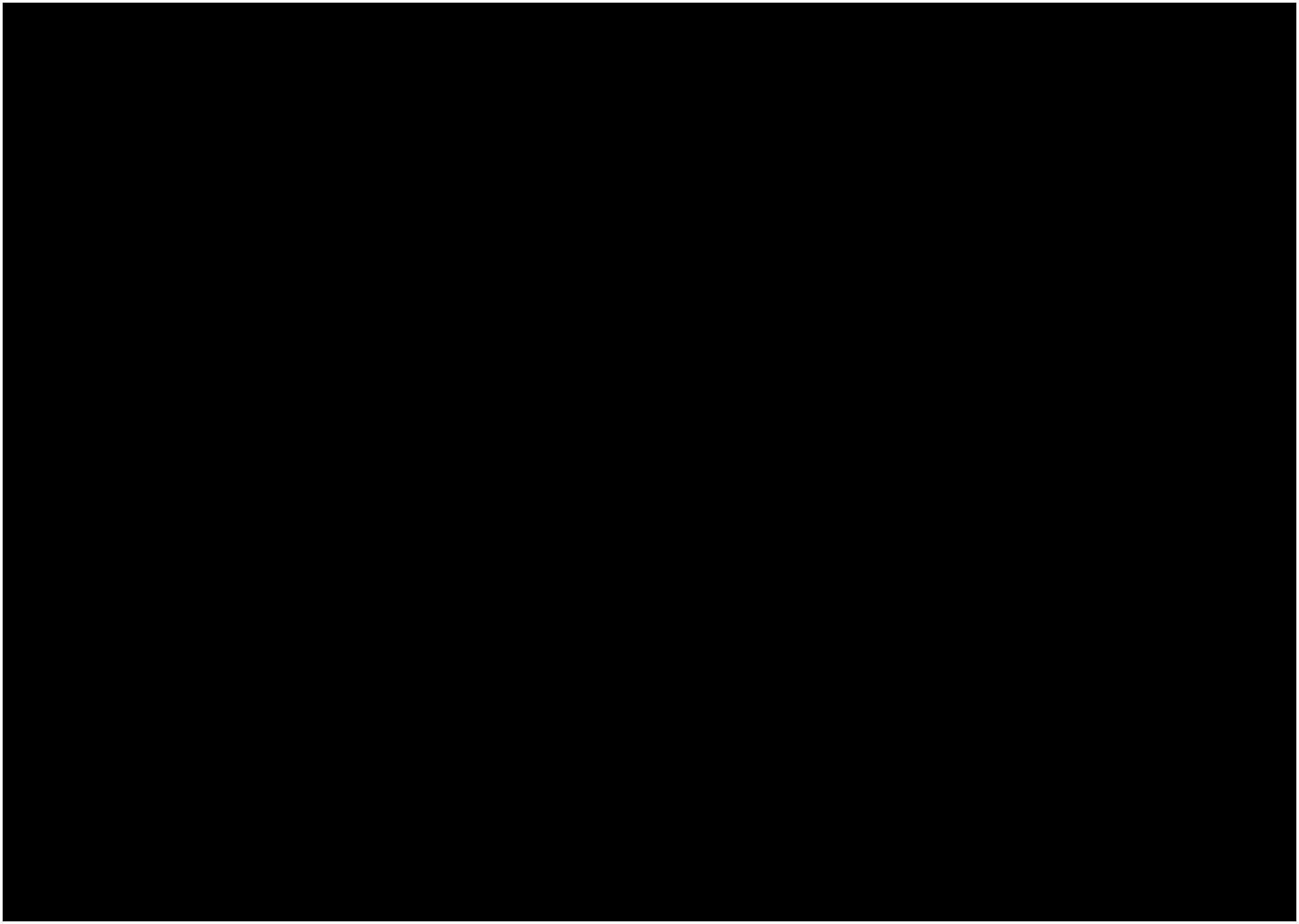


Exhibit C-4

Rates of Return

Company and Rental Years	Value	Source
Met-Ed: 2011 - 2014 Rental Years		
Weighted Cost of Capital	**7.53%**	Opinion and Order, p. 137, Docket No. R-00061366 (Pa. PUC Jan. 11, 2007).
Met-Ed: 2015 - 2016 Rental Years		
Debt Share	48.80%	Direct Testimony of S. Staub, Ex. SRS-4, Attachment A, Docket No. R-2014-2428745 (Pa. PUC Aug. 4, 2014).
Cost of Debt	5.21%	*Id.* at p. 6.
Equity Share	51.20%	*Id.* at Ex. SRS-4, Attachment A.
Cost of Equity	9.90%	Attachment D, Report on Quarterly Earnings (Pa. PUC Bureau of Tech. Util. Servs. June 30, 2015).
Weighted Cost of Capital	**7.61%**	(Debt Share * Cost of Debt) + (Equity Share * Cost of Equity)
Met-Ed: 2017 -2019 Rental Years		
Debt Share	48.80%	Direct Testimony of J. Dipre, p. 4, Docket No. R-2016-2537349 (Pa. PUC Apr. 28, 2016).
Cost of Debt	5.25%	*Id.* at p. 5.
Equity Share	51.20%	*Id.* at p. 4.
Cost of Equity	9.55%	Attachment F, Report on Quarterly Earnings (Pa. PUC Bureau of Tech. Util. Servs. June 30, 2017).
Weighted Cost of Capital	**7.45%**	(Debt Share * Cost of Debt) + (Equity Share * Cost of Equity)
Penelec: 2011 - 2014 Rental Years		
Weighted Cost of Capital	**7.92%**	Opinion and Order, p. 137, Docket No. R-00061367 (Pa. PUC Jan. 11, 2007).
Penelec: 2015 - 2016 Rental Years		
Debt Share	49.90%	Direct Testimony of S. Staub, Ex. SRS-4, Attachment A, Docket No. R-2014-2428743 (Pa. PUC Aug. 4, 2014).
Cost of Debt	5.72%	*Id.* at p. 6.
Equity Share	50.10%	*Id.* at p. 4
Cost of Equity	9.90%	Attachment D, Report on Quarterly Earnings (Pa. PUC Bureau of Tech. Util. Servs. June 30, 2015).
Weighted Cost of Capital	**7.81%**	(Debt Share * Cost of Debt) + (Equity Share * Cost of Equity)
Penelec: 2017 - 2019 Rental Years		
Debt Share	47.40%	Direct Testimony of J. Dipre, p. 4, Docket No. R-2016-2537352 (Pa. PUC Apr. 28, 2016).
Cost of Debt	5.56%	*Id.* at p. 5.
Equity Share	52.60%	*Id.* at p. 4.
Cost of Equity	9.55%	Attachment F, Report on Quarterly Earnings (Pa. PUC Bureau of Tech. Util. Servs. June 30, 2017).
Weighted Cost of Capital	**7.66%**	(Debt Share * Cost of Debt) + (Equity Share * Cost of Equity)

Rates of Return

Company and Rental Years	Value	Source
Penn Power: 2011 - 2014 Rental Years		
Weighted Cost of Capital	**11.14%**	Opinion and Order, p. 216, Docket No. R-870732, 1998 Pa. PUC LEXIS 407 (Pa. PUC May 3, 1988).
Penn Power: 2015 - 2016 Rental Years		
Debt Share	49.90%	Direct Testimony of Steven R. Staub, p. 4, Docket No. R-2014-2428744 (Pa. PUC Aug. 4, 2014).
Cost of Debt	6.12%	*Id.* at p. 6.
Equity Share	50.10%	*Id.* at p. 4.
Cost of Equity	9.90%	Attachment D, Report on Quarterly Earnings (Pa. PUC Bureau of Tech. Util. Servs. June 30, 2015).
Weighted Cost of Capital	**8.01%**	(Debt Share * Cost of Debt) + (Equity Share * Cost of Equity)
Penn Power: 2017 - 2019 Rental Years		
Debt Share	49.90%	Direct Testimony of J. Dipre, p. 4, Docket No. R-2016-2537355 (Pa. PUC Apr. 28, 2016).
Cost of Debt	5.88%	*Id.* at p. 5.
Equity Share	50.10%	*Id.* at p. 4.
Cost of Equity	9.55%	Attachment F, Report on Quarterly Earnings (Pa. PUC Bureau of Tech. Util. Servs. June 30, 2017).
Weighted Cost of Capital	**7.72%**	(Debt Share * Cost of Debt) + (Equity Share * Cost of Equity)

Exhibit C-5

2011 Per-Pole Rate for Met-Ed's, Penelec's, and Penn Power's Use of Verizon's Poles

Sources: ARMIS Report 43-01 (USOA Accounting), FCC Defaults

I. Net Investment per Distribution Pole			
Line #	Description	2010 Data Gross Method	Source
1	Total Distribution Plant	$ 15,411,857,000	ARMIS Report 43-01 Table III, Row 100, Col. (b)
2	Accumulated Depreciation - Distribution	$ 12,745,510,000	ARMIS Report 43-01 Table III, Row 200, Col. (b)
3	Gross Pole Investment	$ 454,493,000	ARMIS Report 43-01 Table III, Row 101, Col. (b)
4	Depreciation Reserve (Poles)	$ 464,850,000	ARMIS Report 43-01 Table III, Row 201, Col. (b)
5	Net Pole Plant	$ (10,357,000)	[3] - [4]
6	Net Deferred Taxes Allocated to Distribution	$ (3,910,000)	ARMIS Report 43-01 Table III, Row 401, Col. (b) + 404, Col. (b)
7	Net Plant less Deferred Taxes	$ (6,447,000)	[5] - [6]
8	Gross Pole Investment	$ 403.06	[3] / [11]
9	Crossarm Allowance	5%	FCC default
10	Gross Pole Cost less Crossarm Allowance	$ 382.91	[8] * (1 - [9])
11	Number of Distribution Poles	1,127,610	ARMIS Report 43-01 Table III, Row 601, Col. (b)
II. Carrying Charge Rate			
Line #	**Description**		**Source**
12	Depreciation Rate for Poles	6.70%	ARMIS Report 43-01 Table III, Row 301, Col. (b)
13	Total General and Administrative	$ 383,162,000	ARMIS Report 43-01 Table III, Row 503, Col. (b)
14	Administrative and General Rate	2.49%	[13] / [1]
15	Maintenance of Overhead Lines	$ 37,528,000	ARMIS Report 43-01 Table III, Row 501, Col. (b)
16	Pole Rental Expense	$ 32,625,000	ARMIS Report 43-01 Table III, Row 501.2, Col. (b)
17	Operation and Maintenance Rate	1.08%	([15] - [16]) / [3]
18	Operating Taxes	$ 50,221,000	ARMIS Report 43-01 Table III, Row 504, Col. (b)
19	Tax Rate	0.33%	[18] / [1]
20	Authorized Rate of Return	11.25%	FCC default
21	Adjusted Rate of Return (Gross Method)	-0.16%	[20] * [7] / [1]
22	Total Carrying Charge Rate	10.43%	[12] + [14] + [17] + [19] + [21]
III. Net Cost of a Bare Pole, Space Factor, and Rate Calculation			
Line #	**Description**		**Source**
23	Annual Pole Cost	$ 39.94	[10] * [22]
24	Urban Service Area Allocation	0.66	FCC default
25	Net Cost of Bare Pole - Urban	$ 26.36	[23] * [24]
26	Space Occupied by Attachment (ft.)	10.5	FCC default
27	Unusable Share Factor	0.667	FCC default
28	Total Unusable Space (ft.)	24	FCC default
29	Average Pole Height	37.5	FCC default
30	Total Usable Space	13.5	[29] - [28]
31	Number of Attaching Entities	5	FCC default (urban)
32	Space Factor	36.53%	{[26] + ([27] * [28]) / [31]} / [29]
33	New Telecom Rate	$ 9.63	[25] * [32]
34	Pre-Existing Telecom Rate	$ 14.59	[23] * [32]

2012 Per-Pole Rate for Met-Ed's, Penelec's, and Penn Power's Use of Verizon's Poles

Sources: ARMIS Report 43-01 (USOA Accounting), FCC Defaults

I. Net Investment per Distribution Pole			
Line #	Description	2011 Data Gross Method	Source
1	Total Distribution Plant	$ 15,174,385,000	ARMIS Report 43-01 Table III, Row 100, Col. (b)
2	Accumulated Depreciation - Distribution	$ 12,755,465,000	ARMIS Report 43-01 Table III, Row 200, Col. (b)
3	Gross Pole Investment	$ 462,879,000	ARMIS Report 43-01 Table III, Row 101, Col. (b)
4	Depreciation Reserve (Poles)	$ 488,424,000	ARMIS Report 43-01 Table III, Row 201, Col. (b)
5	Net Pole Plant	$ (25,545,000)	[3] - [4]
6	Net Deferred Taxes Allocated to Distribution	$ 1,475,000	ARMIS Report 43-01 Table III, Row 401, Col. (b) + 404, Col. (b)
7	Net Plant less Deferred Taxes	$ (27,020,000)	[5] - [6]
8	Gross Pole Investment	$ 410.50	[3] / [11]
9	Crossarm Allowance	5%	FCC default
10	Gross Pole Cost less Crossarm Allowance	$ 389.97	[8] * (1 - [9])
11	Number of Distribution Poles	1,127,610	ARMIS Report 43-01 Table III, Row 601, Col. (b)
II. Carrying Charge Rate			
Line #	**Description**		**Source**
12	Depreciation Rate for Poles	6.70%	ARMIS Report 43-01 Table III, Row 301, Col. (b)
13	Total General and Administrative	$ 800,956,000	ARMIS Report 43-01 Table III, Row 503, Col. (b)
14	Administrative and General Rate	5.28%	[13] / [1]
15	Maintenance of Overhead Lines	$ 34,056,000	ARMIS Report 43-01 Table III, Row 501, Col. (b)
16	Pole Rental Expense	$ 28,593,000	ARMIS Report 43-01 Table III, Row 501.2, Col. (b)
17	Operation and Maintenance Rate	1.18%	([15] - [16]) / [3]
18	Operating Taxes	$ (329,371,000)	ARMIS Report 43-01 Table III, Row 504, Col. (b)
19	Tax Rate	-2.17%	[18] / [1]
20	Authorized Rate of Return	11.25%	FCC default
21	Adjusted Rate of Return (Gross Method)	-0.66%	[20] * [7] / [1]
22	Total Carrying Charge Rate	10.33%	[12] + [14] + [17] + [19] + [21]
III. Net Cost of a Bare Pole, Space Factor, and Rate Calculation			
Line #	**Description**		**Source**
23	Annual Pole Cost	$ 40.29	[10] * [22]
24	Urban Service Area Allocation	0.66	FCC default
25	Net Cost of Bare Pole - Urban	$ 26.59	[23] * [24]
26	Space Occupied by Attachment (ft.)	10.5	FCC default
27	Unusable Share Factor	0.667	FCC default
28	Total Unusable Space (ft.)	24	FCC default
29	Average Pole Height	37.5	FCC default
30	Total Usable Space	13.5	[29] - [28]
31	Number of Attaching Entities	5	FCC default (urban)
32	Space Factor	36.53%	{[26] + ([27] * [28]) / [31]} / [29]
33	New Telecom Rate	$ 9.71	[25] * [32]
34	Pre-Existing Telecom Rate	$ 14.72	[23] * [32]

2013 Per-Pole Rate for Met-Ed's, Penelec's, and Penn Power's Use of Verizon's Poles

Sources: ARMIS Report 43-01 (USOA Accounting), FCC Defaults

I. Net Investment per Distribution Pole			
Line #	Description	2012 Data Gross Method	Source
1	Total Distribution Plant	$ 15,490,162,000	ARMIS Report 43-01 Table III, Row 100, Col. (b)
2	Accumulated Depreciation - Distribution	$ 13,241,777,000	ARMIS Report 43-01 Table III, Row 200, Col. (b)
3	Gross Pole Investment	$ 475,032,000	ARMIS Report 43-01 Table III, Row 101, Col. (b)
4	Depreciation Reserve (Poles)	$ 511,940,000	ARMIS Report 43-01 Table III, Row 201, Col. (b)
5	Net Pole Plant	$ (36,908,000)	[3] - [4]
6	Net Deferred Taxes Allocated to Distribution	$ 64,000	ARMIS Report 43-01 Table III, Row 401, Col. (b) + 404, Col. (b)
7	Net Plant less Deferred Taxes	$ (36,972,000)	[5] - [6]
8	Gross Pole Investment	$ 423.55	[3] / [11]
9	Crossarm Allowance	5%	FCC default
10	Gross Pole Cost less Crossarm Allowance	$ 402.37	[8] * (1 - [9])
11	Number of Distribution Poles	1,121,555	ARMIS Report 43-01 Table III, Row 601, Col. (b)
II. Carrying Charge Rate			
Line #	**Description**		**Source**
12	Depreciation Rate for Poles	6.70%	ARMIS Report 43-01 Table III, Row 301, Col. (b)
13	Total General and Administrative	$ 869,383,000	ARMIS Report 43-01 Table III, Row 503, Col. (b)
14	Administrative and General Rate	5.61%	[13] / [1]
15	Maintenance of Overhead Lines	$ 30,985,000	ARMIS Report 43-01 Table III, Row 501, Col. (b)
16	Pole Rental Expense	$ 26,374,000	ARMIS Report 43-01 Table III, Row 501.2, Col. (b)
17	Operation and Maintenance Rate	0.97%	([15] - [16]) / [3]
18	Operating Taxes	$ 63,496,000	ARMIS Report 43-01 Table III, Row 504, Col. (b)
19	Tax Rate	0.41%	[18] / [1]
20	Authorized Rate of Return	11.25%	FCC default
21	Adjusted Rate of Return (Gross Method)	-0.88%	[20] * [7] / [1]
22	Total Carrying Charge Rate	12.82%	[12] + [14] + [17] + [19] + [21]
III. Net Cost of a Bare Pole, Space Factor, and Rate Calculation			
Line #	**Description**		**Source**
23	Annual Pole Cost	$ 51.57	[10] * [22]
24	Urban Service Area Allocation	0.66	FCC default
25	Net Cost of Bare Pole - Urban	$ 34.04	[23] * [24]
26	Space Occupied by Attachment (ft.)	10.5	FCC default
27	Unusable Share Factor	0.667	FCC default
28	Total Unusable Space (ft.)	24	FCC default
29	Average Pole Height	37.5	FCC default
30	Total Usable Space	13.5	[29] - [28]
31	Number of Attaching Entities	5	FCC default (urban)
32	Space Factor	36.53%	{[26] + ([27] * [28]) / [31]} / [29]
33	New Telecom Rate	$ 12.44	[25] * [32]
34	Pre-Existing Telecom Rate	$ 18.84	[23] * [32]

2014 Per-Pole Rate for Met-Ed's, Penelec's, and Penn Power's Use of Verizon's Poles

Sources: ARMIS Report 43-01 (USOA Accounting), FCC Defaults

I. Net Investment per Distribution Pole			
Line #	Description	2013 Data Gross Method	Source
1	Total Distribution Plant	$ 15,828,883,084	ARMIS Report 43-01 Table III, Row 100, Col. (b)
2	Accumulated Depreciation - Distribution	$ 13,712,387,464	ARMIS Report 43-01 Table III, Row 200, Col. (b)
3	Gross Pole Investment	$ 484,980,138	ARMIS Report 43-01 Table III, Row 101, Col. (b)
4	Depreciation Reserve (Poles)	$ 537,784,282	ARMIS Report 43-01 Table III, Row 201, Col. (b)
5	Net Pole Plant	$ (52,804,144)	[3] - [4]
6	Net Deferred Taxes Allocated to Distribution	$ (19,382,919)	ARMIS Report 43-01 Table III, Row 401, Col. (b) + 404, Col. (b)
7	Net Plant less Deferred Taxes	$ (33,421,225)	[5] - [6]
8	Gross Pole Investment	$ 432.03	[3] / [11]
9	Crossarm Allowance	5%	FCC default
10	Gross Pole Cost less Crossarm Allowance	$ 410.42	[8] * (1 - [9])
11	Number of Distribution Poles	1,122,573	ARMIS Report 43-01 Table III, Row 601, Col. (b)
II. Carrying Charge Rate			
Line #	**Description**		**Source**
12	Depreciation Rate for Poles	6.70%	ARMIS Report 43-01 Table III, Row 301, Col. (b)
13	Total General and Administrative	$ (341,312,741)	ARMIS Report 43-01 Table III, Row 503, Col. (b)
14	Administrative and General Rate	-2.16%	[13] / [1]
15	Maintenance of Overhead Lines	$ 45,985,557	ARMIS Report 43-01 Table III, Row 501, Col. (b)
16	Pole Rental Expense	$ 25,005,000	ARMIS Report 43-01 Table III, Row 501.2, Col. (b)
17	Operation and Maintenance Rate	4.33%	([15] - [16]) / [3]
18	Operating Taxes	$ 662,186,266	ARMIS Report 43-01 Table III, Row 504, Col. (b)
19	Tax Rate	4.18%	[18] / [1]
20	Authorized Rate of Return	11.25%	FCC default
21	Adjusted Rate of Return (Gross Method)	-0.78%	[20] * [7] / [1]
22	Total Carrying Charge Rate	12.28%	[12] + [14] + [17] + [19] + [21]
III. Net Cost of a Bare Pole, Space Factor, and Rate Calculation			
Line #	**Description**		**Source**
23	Annual Pole Cost	$ 50.39	[10] * [22]
24	Urban Service Area Allocation	0.66	FCC default
25	Net Cost of Bare Pole - Urban	$ 33.26	[23] * [24]
26	Space Occupied by Attachment (ft.)	10.5	FCC default
27	Unusable Share Factor	0.667	FCC default
28	Total Unusable Space (ft.)	24	FCC default
29	Average Pole Height	37.5	FCC default
30	Total Usable Space	13.5	[29] - [28]
31	Number of Attaching Entities	5	FCC default (urban)
32	Space Factor	36.53%	{[26] + ([27] * [28]) / [31]} / [29]
33	New Telecom Rate	$ 12.15	[25] * [32]
34	Pre-Existing Telecom Rate	$ 18.41	[23] * [32]

2015 Per-Pole Rate for Met-Ed's, Penelec's, and Penn Power's Use of Verizon's Poles

Sources: ARMIS Report 43-01 (USOA Accounting), FCC Defaults

I. Net Investment per Distribution Pole			
Line #	Description	2014 Data Gross Method	Source
1	Total Distribution Plant	$ 16,037,399,084	ARMIS Report 43-01 Table III, Row 100, Col. (b)
2	Accumulated Depreciation - Distribution	$ 14,061,000,194	ARMIS Report 43-01 Table III, Row 200, Col. (b)
3	Gross Pole Investment	$ 490,407,976	ARMIS Report 43-01 Table III, Row 101, Col. (b)
4	Depreciation Reserve (Poles)	$ 566,610,748	ARMIS Report 43-01 Table III, Row 201, Col. (b)
5	Net Pole Plant	$ (76,202,772)	[3] - [4]
6	Net Deferred Taxes Allocated to Distribution	$ (26,030,825)	ARMIS Report 43-01 Table III, Row 401, Col. (b) + 404, Col. (b)
7	Net Plant less Deferred Taxes	$ (50,171,947)	[5] - [6]
8	Gross Pole Investment	$ 436.71	[3] / [11]
9	Crossarm Allowance	5%	FCC default
10	Gross Pole Cost less Crossarm Allowance	$ 414.87	[8] * (1 - [9])
11	Number of Distribution Poles	1,122,965	ARMIS Report 43-01 Table III, Row 601, Col. (b)
II. Carrying Charge Rate			
Line #	Description		Source
12	Depreciation Rate for Poles	6.70%	ARMIS Report 43-01 Table III, Row 301, Col. (b)
13	Total General and Administrative	$ 895,684,823	ARMIS Report 43-01 Table III, Row 503, Col. (b)
14	Administrative and General Rate	5.58%	[13] / [1]
15	Maintenance of Overhead Lines	$ 43,003,700	ARMIS Report 43-01 Table III, Row 501, Col. (b)
16	Pole Rental Expense	$ 22,618,144	ARMIS Report 43-01 Table III, Row 501.2, Col. (b)
17	Operation and Maintenance Rate	4.16%	([15] - [16]) / [3]
18	Operating Taxes	$ 64,821,732	ARMIS Report 43-01 Table III, Row 504, Col. (b)
19	Tax Rate	0.40%	[18] / [1]
20	Authorized Rate of Return	11.25%	FCC default
21	Adjusted Rate of Return (Gross Method)	-1.15%	[20] * [7] / [1]
22	Total Carrying Charge Rate	15.70%	[12] + [14] + [17] + [19] + [21]
III. Net Cost of a Bare Pole, Space Factor, and Rate Calculation			
Line #	Description		Source
23	Annual Pole Cost	$ 65.11	[10] * [22]
24	Urban Service Area Allocation	0.66	FCC default
25	Net Cost of Bare Pole - Urban	$ 42.98	[23] * [24]
26	Space Occupied by Attachment (ft.)	10.5	FCC default
27	Unusable Share Factor	0.667	FCC default
28	Total Unusable Space (ft.)	24	FCC default
29	Average Pole Height	37.5	FCC default
30	Total Usable Space	13.5	[29] - [28]
31	Number of Attaching Entities	5	FCC default (urban)
32	Space Factor	36.53%	{[26] + ([27] * [28]) / [31]} / [29]
33	New Telecom Rate	$ 15.70	[25] * [32]
34	Pre-Existing Telecom Rate	$ 23.79	[23] * [32]

2016 Per-Pole Rate for Met-Ed's, Penelec's, and Penn Power's Use of Verizon's Poles

Sources: ARMIS Report 43-01 (USOA Accounting), FCC Defaults

I. Net Investment per Distribution Pole			
Line #	Description	2015 Data Gross Method	Source
1	Total Distribution Plant	$ 16,411,161,372	ARMIS Report 43-01 Table III, Row 100, Col. (b)
2	Accumulated Depreciation - Distribution	$ 14,577,375,631	ARMIS Report 43-01 Table III, Row 200, Col. (b)
3	Gross Pole Investment	$ 499,152,651	ARMIS Report 43-01 Table III, Row 101, Col. (b)
4	Depreciation Reserve (Poles)	$ 613,574,804	ARMIS Report 43-01 Table III, Row 201, Col. (b)
5	Net Pole Plant	$ (114,422,153)	[3] - [4]
6	Net Deferred Taxes Allocated to Distribution	$ (21,392,101)	ARMIS Report 43-01 Table III, Row 401, Col. (b) + 404, Col. (b)
7	Net Plant less Deferred Taxes	$ (93,030,052)	[5] - [6]
8	Gross Pole Investment	$ 443.77	[3] / [11]
9	Crossarm Allowance	5%	FCC default
10	Gross Pole Cost less Crossarm Allowance	$ 421.58	[8] * (1 - [9])
11	Number of Distribution Poles	1,124,805	ARMIS Report 43-01 Table III, Row 601, Col. (b)
II. Carrying Charge Rate			
Line #	**Description**		**Source**
12	Depreciation Rate for Poles	6.70%	ARMIS Report 43-01 Table III, Row 301, Col. (b)
13	Total General and Administrative	$ (40,669,038)	ARMIS Report 43-01 Table III, Row 503, Col. (b)
14	Administrative and General Rate	-0.25%	[13] / [1]
15	Maintenance of Overhead Lines	$ 45,387,246	ARMIS Report 43-01 Table III, Row 501, Col. (b)
16	Pole Rental Expense	$ 25,427,575	ARMIS Report 43-01 Table III, Row 501.2, Col. (b)
17	Operation and Maintenance Rate	4.00%	([15] - [16]) / [3]
18	Operating Taxes	$ 639,585,454	ARMIS Report 43-01 Table III, Row 504, Col. (b)
19	Tax Rate	3.90%	[18] / [1]
20	Authorized Rate of Return	11.125%	FCC default
21	Adjusted Rate of Return (Gross Method)	-2.07%	[20] * [7] / [1]
22	Total Carrying Charge Rate	12.27%	[12] + [14] + [17] + [19] + [21]
III. Net Cost of a Bare Pole, Space Factor, and Rate Calculation			
Line #	**Description**		**Source**
23	Annual Pole Cost	$ 51.75	[10] * [22]
24	Urban Service Area Allocation	0.66	FCC default
25	Net Cost of Bare Pole - Urban	$ 34.15	[23] * [24]
26	Space Occupied by Attachment (ft.)	10.5	FCC default
27	Unusable Share Factor	0.667	FCC default
28	Total Unusable Space (ft.)	24	FCC default
29	Average Pole Height	37.5	FCC default
30	Total Usable Space	13.5	[29] - [28]
31	Number of Attaching Entities	5	FCC default (urban)
32	Space Factor	36.53%	{[26] + ([27] * [28]) / [31]} / [29]
33	New Telecom Rate	$ 12.48	[25] * [32]
34	Pre-Existing Telecom Rate	$ 18.91	[23] * [32]

2017 Per-Pole Rate for Met-Ed's, Penelec's, and Penn Power's Use of Verizon's Poles

Sources: ARMIS Report 43-01 (USOA Accounting), FCC Defaults

I. Net Investment per Distribution Pole			
Line #	Description	2016 Data Gross Method	Source
1	Total Distribution Plant	$ 16,767,145,000	ARMIS Report 43-01 Table III, Row 100, Col. (b)
2	Accumulated Depreciation - Distribution	$ 15,001,020,000	ARMIS Report 43-01 Table III, Row 200, Col. (b)
3	Gross Pole Investment	$ 509,744,000	ARMIS Report 43-01 Table III, Row 101, Col. (b)
4	Depreciation Reserve (Poles)	$ 634,197,000	ARMIS Report 43-01 Table III, Row 201, Col. (b)
5	Net Pole Plant	$ (124,453,000)	[3] - [4]
6	Net Deferred Taxes Allocated to Distribution	$ (19,492,000)	ARMIS Report 43-01 Table III, Row 401, Col. (b) + 404, Col. (b)
7	Net Plant less Deferred Taxes	$ (104,961,000)	[5] - [6]
8	Gross Pole Investment	$ 452.06	[3] / [11]
9	Crossarm Allowance	5%	FCC default
10	Gross Pole Cost less Crossarm Allowance	$ 429.45	[8] * (1 - [9])
11	Number of Distribution Poles	1,127,610	ARMIS Report 43-01 Table III, Row 601, Col. (b)
II. Carrying Charge Rate			
Line #	**Description**		**Source**
12	Depreciation Rate for Poles	6.70%	ARMIS Report 43-01 Table III, Row 301, Col. (b)
13	Total General and Administrative	$ 495,389,000	ARMIS Report 43-01 Table III, Row 503, Col. (b)
14	Administrative and General Rate	2.95%	[13] / [1]
15	Maintenance of Overhead Lines	$ 51,293,000	ARMIS Report 43-01 Table III, Row 501, Col. (b)
16	Pole Rental Expense	$ 27,781,000	ARMIS Report 43-01 Table III, Row 501.2, Col. (b)
17	Operation and Maintenance Rate	4.61%	([15] - [16]) / [3]
18	Operating Taxes	$ 363,626,000	ARMIS Report 43-01 Table III, Row 504, Col. (b)
19	Tax Rate	2.17%	[18] / [1]
20	Authorized Rate of Return	10.875%	FCC default
21	Adjusted Rate of Return (Gross Method)	-2.24%	[20] * [7] / [1]
22	Total Carrying Charge Rate	14.20%	[12] + [14] + [17] + [19] + [21]
III. Net Cost of a Bare Pole, Space Factor, and Rate Calculation			
Line #	**Description**		**Source**
23	Annual Pole Cost	$ 60.97	[10] * [22]
24	Urban Service Area Allocation	0.66	FCC default
25	Net Cost of Bare Pole - Urban	$ 40.24	[23] * [24]
26	Space Occupied by Attachment (ft.)	10.5	FCC default
27	Unusable Share Factor	0.667	FCC default
28	Total Unusable Space (ft.)	24	FCC default
29	Average Pole Height	37.5	FCC default
30	Total Usable Space	13.5	[29] - [28]
31	Number of Attaching Entities	5	FCC default (urban)
32	Space Factor	36.53%	{[26] + ([27] * [28]) / [31]} / [29]
33	New Telecom Rate	$ 14.70	[25] * [32]
34	Pre-Existing Telecom Rate	$ 22.27	[23] * [32]

2018 Per-Pole Rate for Met-Ed's, Penelec's, and Penn Power's Use of Verizon's Poles

Sources: ARMIS Report 43-01 (USOA Accounting), FCC Defaults

I. Net Investment per Distribution Pole			
Line #	Description	2017 Data Gross Method	Source
1	Total Distribution Plant	$ 17,186,648,677	ARMIS Report 43-01 Table III, Row 100, Col. (b)
2	Accumulated Depreciation - Distribution	$ 15,592,563,057	ARMIS Report 43-01 Table III, Row 200, Col. (b)
3	Gross Pole Investment	$ 525,323,664	ARMIS Report 43-01 Table III, Row 101, Col. (b)
4	Depreciation Reserve (Poles)	$ 662,536,603	ARMIS Report 43-01 Table III, Row 201, Col. (b)
5	Net Pole Plant	$ (137,212,938)	[3] - [4]
6	Net Deferred Taxes Allocated to Distribution	$ (20,155,507)	ARMIS Report 43-01 Table III, Row 401, Col. (b) + 404, Col. (b)
7	Net Plant less Deferred Taxes	$ (117,057,431)	[5] - [6]
8	Gross Pole Investment	$ 464.72	[3] / [11]
9	Crossarm Allowance	5%	FCC default
10	Gross Pole Cost less Crossarm Allowance	$ 441.49	[8] * (1 - [9])
11	Number of Distribution Poles	1,130,399	ARMIS Report 43-01 Table III, Row 601, Col. (b)
II. Carrying Charge Rate			
Line #	**Description**		**Source**
12	Depreciation Rate for Poles	6.70%	ARMIS Report 43-01 Table III, Row 301, Col. (b)
13	Total General and Administrative	$ 1,625,487,624	ARMIS Report 43-01 Table III, Row 503, Col. (b)
14	Administrative and General Rate	9.46%	[13] / [1]
15	Maintenance of Overhead Lines	$ 52,444,201	ARMIS Report 43-01 Table III, Row 501, Col. (b)
16	Pole Rental Expense	$ 28,591,700	ARMIS Report 43-01 Table III, Row 501.2, Col. (b)
17	Operation and Maintenance Rate	4.54%	([15] - [16]) / [3]
18	Operating Taxes	$ (64,764,971)	ARMIS Report 43-01 Table III, Row 504, Col. (b)
19	Tax Rate	-0.38%	[18] / [1]
20	Authorized Rate of Return	10.625%	FCC default
21	Adjusted Rate of Return (Gross Method)	-2.37%	[20] * [7] / [1]
22	Total Carrying Charge Rate	17.95%	[12] + [14] + [17] + [19] + [21]
III. Net Cost of a Bare Pole, Space Factor, and Rate Calculation			
Line #	**Description**		**Source**
23	Annual Pole Cost	$ 79.26	[10] * [22]
24	Urban Service Area Allocation	0.66	FCC default
25	Net Cost of Bare Pole - Urban	$ 52.31	[23] * [24]
26	Space Occupied by Attachment (ft.)	10.5	FCC default
27	Unusable Share Factor	0.667	FCC default
28	Total Unusable Space (ft.)	24	FCC default
29	Average Pole Height	37.5	FCC default
30	Total Usable Space	13.5	[29] - [28]
31	Number of Attaching Entities	5	FCC default (urban)
32	Space Factor	36.53%	{[26] + ([27] * [28]) / [31]} / [29]
33	New Telecom Rate	$ 19.11	[25] * [32]
34	Pre-Existing Telecom Rate	$ 28.96	[23] * [32]

2019 Per-Pole Rate for Met-Ed's, Penelec's, and Penn Power's Use of Verizon's Poles

Sources: ARMIS Report 43-01 (GAAP Accounting), FCC Defaults

I. Net Investment per Distribution Pole				
Line #	Description		2018 Data Net Method	Source
1	Total Distribution Plant	$	15,242,278,689	ARMIS Report 43-01 Table III, Row 100, Col. (b)
2	Accumulated Depreciation - Distribution	$	10,714,444,135	ARMIS Report 43-01 Table III, Row 200, Col. (b)
3	Gross Pole Investment	$	603,117,713	ARMIS Report 43-01 Table III, Row 101, Col. (b)
4	Depreciation Reserve (Poles)	$	385,206,028	ARMIS Report 43-01 Table III, Row 201, Col. (b)
5	Net Pole Plant	$	217,911,685	[3] - [4]
6	Net Deferred Taxes Allocated to Distribution	$	5,065,801	ARMIS Report 43-01 Table III, Row 401 + 404, Col. (b)
7	Net Plant less Deferred Taxes	$	212,845,884	[5] - [6]
8	Net Pole Investment	$	188.32	[3] / [11]
9	Crossarm Allowance		5%	FCC default
10	Net Pole Cost less Crossarm Allowance	$	178.90	[8] * (1 - [9])
11	Number of Distribution Poles		1,130,262	ARMIS Report 43-01 Table III, Row 601, Col. (b)
II. Capital Carrying Charge Rate				
Line #	Description			Source
12	Depreciation Rate for Poles		18.99%	ARMIS Report 43-01 Table III, Row 301, Col. (b) * [3] / [7]
13	Total General and Administrative	$	385,521,734	ARMIS Report 43-01 Table III, Row 503, Col. (b)
14	Administrative and General Rate		9.11%	[13] / [A4]
15	Maintenance of Overhead Lines	$	53,674,649	ARMIS Report 43-01 Table III, Row 501, Col. (b)
16	Pole Rental Expense	$	24,469,956	ARMIS Report 43-01 Table III, Row 501.2, Col. (b)
17	Operation and Maintenance Rate		13.72%	([15] - [16]) / [3]
18	Operating Taxes	$	240,364,105	ARMIS Report 43-01 Table III, Row 504, Col. (b)
19	Tax Rate		5.68%	[18] / [A4]
20	Authorized Rate of Return		10.375%	FCC default
21	Total Capital Carrying Charge Rate		57.88%	[12] + [14] + [17] + [19] + [20]
III. Net Cost of a Bare Pole, Space Factor, and Rate Calculation				
Line #	Description			Source
22	Annual Pole Cost	$	103.55	[10] * [21]
23	Urban Service Area Allocation		0.66	FCC default
24	Net Cost of Bare Pole - Urban	$	68.34	[22] * [23]
25	Space Occupied by Attachment (ft.)		10.5	FCC default
26	Unusable Share Factor		0.667	FCC default
27	Total Unusable Space (ft.)		24.0	FCC default
28	Average Pole Height		37.5	FCC default
29	Total Usable Space		13.5	[28] - [27]
30	Number of Attaching Entities		5	FCC default (urban)
31	Space Factor		36.53%	{[26] + ([27] * [28]) / [31]} / [29]
32	New Telecom Rate	$	18.28	([24] * [31]) - [A5]
33	Pre-Existing Telecom Rate	$	27.70	[32] / 0.66

Additional Inputs and Calculations				
Line #	Description		2018 Data Net Method	Source
A1	Gross Plant Investment	$	15,242,278,689	ARMIS Report 43-01 Table III, Row 100, Col. (b)
A2	Total State Depreciation	$	10,714,444,135	ARMIS Report 43-01 Table III, Row 200, Col. (b)
A3	Total Accumulated Taxes	$	298,222,398	ARMIS Report 43-01 Table III Rows 403 + 406 Col (b)
A4	Net Plant Investment	$	4,229,612,156	[A1] - [A2] - [A3]
A5	Implementation Rate Difference	$	6.69	47 C.F.R. § 1.1406(e)

Exhibit C-6

Overpayment Calculation: Proportional New Telecom Rates

	2011 (172 days)	2012	2013	2014	2015	2016	2017	2018	2019*	Total
Verizon's Net Rent Payments to FirstEnergy	[redacted]									
Verizon's Net Rent Payment to Met-Ed										
Verizon's Net Rent Payment to Penelec										
Verizon's Net Rent Payment to Penn Power										
Verizon's Total Net Rent Payment to FirstEnergy										
Verizon's Net New Telecom Rent to FirstEnergy										
Met-Ed Poles Used By Verizon	129,306	129,288	129,308	129,324	129,421	129,422	129,422	129,421		
Per-Pole New Telecom Rate	$ 8.29	$ 9.87	$ 10.07	$ 5.02	$ 9.35	$ 8.79	$ 9.55	$ 12.20		
Verizon's Gross Rent to Met-Ed	$ 505,137	$ 1,276,073	$ 1,302,132	$ 649,206	$ 1,210,086	$ 1,137,619	$ 1,235,980	$ 1,578,936	Not yet invoiced	
Verizon Poles Used By Met-Ed	30,015	30,018	30,021	30,021	30,023	30,026	30,026	30,027		
Per-Pole New Telecom Rate	$ 9.63	$ 9.71	$ 12.44	$ 12.15	$ 15.70	$ 12.48	$ 14.70	$ 19.11		
Met-Ed's Gross Rent to Verizon	$ 136,207	$ 291,475	$ 373,461	$ 364,755	$ 471,361	$ 374,724	$ 441,382	$ 573,816		
Net New Telecom Rent to Met-Ed	$ 368,929	$ 984,598	$ 928,670	$ 284,451	$ 738,725	$ 762,895	$ 794,598	$ 1,005,120		$ 5,867,987
Penelec Poles Used by Verizon	145,168	145,326	145,419	146,720	146,732	146,794	146,814	146,859		
Per-Pole New Telecom Rate	$ 6.43	$ 6.79	$ 7.18	$ 5.21	$ 6.96	$ 7.18	$ 7.49	$ 10.49		
Verizon's Gross Rent to Penelec	$ 439,863	$ 986,764	$ 1,044,108	$ 764,411	$ 1,021,255	$ 1,053,981	$ 1,099,637	$ 1,540,551		
Verizon Poles Used by Penelec	73,079	73,285	73,398	73,398	73,398	73,399	73,400	73,400	Not yet invoiced	
Per-Pole New Telecom Rate	$ 9.63	$ 9.71	$ 12.44	$ 12.15	$ 15.70	$ 12.48	$ 14.70	$ 19.11		
Penelec's Gross Rent to Verizon	$ 331,630	$ 711,597	$ 913,071	$ 891,786	$ 1,152,349	$ 916,020	$ 1,078,980	$ 1,402,674		
Net New Telecom Rent to Penelec	$ 108,233	$ 275,166	$ 131,037	$ (127,375)	$ (131,094)	$ 137,961	$ 20,657	$ 137,877		$ 552,463
Penn Power Poles Used By Verizon	25,023	25,063	25,063	25,282	25,552	25,554	25,557	25,574	25,595	
Per-Pole New Telecom Rate	$ 7.30	$ 8.47	$ 8.51	$ 8.21	$ 8.94	$ 9.40	$ 9.08	$ 11.18	$ 11.80	
Verizon's Gross Rent to Penn Power	$ 86,079	$ 212,284	$ 213,286	$ 207,565	$ 228,435	$ 240,208	$ 232,058	$ 285,917	$ 302,021	
Verizon Poles Used By Penn Power	7,151	7,162	7,158	7,158	7,414	7,413	7,411	7,416	7,415	
Per-Pole New Telecom Rate	$ 9.63	$ 9.71	$ 12.44	$ 12.15	$ 15.70	$ 12.48	$ 14.70	$ 19.11	$ 18.28	
Penn Power's Gross Rent to Verizon	$ 32,451	$ 69,543	$ 89,046	$ 86,970	$ 116,400	$ 92,514	$ 108,942	$ 141,720	$ 135,546	
Net New Telecom Rent to Penn Power	$ 53,628	$ 142,741	$ 124,241	$ 120,596	$ 112,035	$ 147,693	$ 123,116	$ 144,198	$ 166,475	$ 1,134,721
Verizon's Total Net New Telecom Rent to FirstEnergy	$ 530,790	$ 1,402,505	$ 1,183,948	$ 277,672	$ 719,666	$ 1,048,550	$ 938,371	$ 1,287,195	$ 166,475	$ 7,555,171
Verizon's Overpayment to FirstEnergy	[redacted]									

*The 2019 calculation assumes that Penn Power pays in full Verizon's outstanding invoice for 2019 rent.

Overpayment Calculation: Proportional Pre-Existing Telecom Rates

	2011 (172 days)	2012	2013	2014	2015	2016	2017	2018	2019*	Total
Verizon's Net Rent Payments to FirstEnergy										
Verizon's Net Rent Payment to Met-Ed	[redacted]									
Verizon's Net Rent Payment to Penelec										
Verizon's Net Rent Payment to Penn Power										
Verizon's Total Net Rent Payment to FirstEnergy										
Verizon's Net Pre-Existing Telecom Rent to FirstEnergy										
Met-Ed Poles Used By Verizon	129,306	129,288	129,308	129,324	129,421	129,422	129,422	129,421		
Per-Pole Pre-Existing Telecom Rate	$ 12.57	$ 14.96	$ 15.26	$ 7.61	$ 14.16	$ 13.32	$ 14.47	$ 18.49		
Verizon's Gross Rent to Met-Ed	$ 765,931	$ 1,934,148	$ 1,973,240	$ 984,156	$ 1,832,601	$ 1,723,901	$ 1,872,736	$ 2,392,994	Not yet invoiced	
Verizon Poles Used By Met-Ed	30,015	30,018	30,021	30,021	30,023	30,026	30,026	30,027		
Per-Pole Pre-Existing Telecom Rate	$ 14.59	$ 14.72	$ 18.84	$ 18.41	$ 23.79	$ 18.91	$ 22.27	$ 28.96		
Met-Ed's Gross Rent to Verizon	$ 206,362	$ 441,865	$ 565,596	$ 552,687	$ 714,247	$ 567,792	$ 668,679	$ 869,582		
Net Pre-Existing Telecom Rent to Met-Ed	$ 559,569	$ 1,492,284	$ 1,407,644	$ 431,469	$ 1,118,354	$ 1,156,109	$ 1,204,057	$ 1,523,412		$ 8,892,899
Penelec Poles Used by Verizon	145,168	145,326	145,419	146,720	146,732	146,794	146,814	146,859		
Per-Pole Pre-Existing Telecom Rate	$ 9.74	$ 10.29	$ 10.89	$ 7.89	$ 10.54	$ 10.88	$ 11.35	$ 15.90		
Verizon's Gross Rent to Penelec	$ 666,293	$ 1,495,405	$ 1,583,613	$ 1,157,621	$ 1,546,555	$ 1,597,119	$ 1,666,339	$ 2,335,058	Not yet invoiced	
Verizon Poles Used by Penelec	73,079	73,285	73,398	73,398	73,398	73,399	73,400	73,400		
Per-Pole Pre-Existing Telecom Rate	$ 14.59	$ 14.72	$ 18.84	$ 18.41	$ 23.79	$ 18.91	$ 22.27	$ 28.96		
Penelec's Gross Rent to Verizon	$ 502,439	$ 1,078,755	$ 1,382,818	$ 1,351,257	$ 1,746,138	$ 1,387,975	$ 1,634,618	$ 2,125,664		
Net Pre-Existing Telecom Rent to Penelec	$ 163,854	$ 416,649	$ 200,795	$ (193,636)	$ (199,583)	$ 209,144	$ 31,721	$ 209,394		$ 838,337
Penn Power Poles Used By Verizon	25,023	25,063	25,063	25,282	25,552	25,554	25,557	25,574	25,595	
Per-Pole Pre-Existing Telecom Rate	$ 11.06	$ 12.83	$ 12.90	$ 12.44	$ 13.54	$ 14.24	$ 13.75	$ 16.94	$ 17.88	
Verizon's Gross Rent to Penn Power	$ 130,416	$ 321,558	$ 323,313	$ 314,508	$ 345,974	$ 363,889	$ 351,409	$ 433,224	$ 457,639	
Verizon Poles Used By Penn Power	7,151	7,162	7,158	7,158	7,414	7,413	7,411	7,416	7,415	
Per-Pole Pre-Existing Telecom Rate	$ 14.59	$ 14.72	$ 18.84	$ 18.41	$ 23.79	$ 18.91	$ 22.27	$ 28.96	$ 27.70	
Penn Power's Gross Rent to Verizon	$ 49,165	$ 105,425	$ 134,857	$ 131,779	$ 176,379	$ 140,180	$ 165,043	$ 214,767	$ 205,396	
Net Pre-Existing Telecom Rent to Penn Power	$ 81,251	$ 216,134	$ 188,456	$ 182,729	$ 169,595	$ 223,709	$ 186,366	$ 218,456	$ 252,243	$ 1,718,939
Verizon's Total Net Pre-Existing Telecom Rent to FirstEnergy	$ 804,674	$ 2,125,067	$ 1,796,895	$ 420,562	$ 1,088,366	$ 1,588,962	$ 1,422,144	$ 1,951,263	$ 252,243	$ 11,450,175
Verizon's Overpayment to FirstEnergy	[redacted]									

*The 2019 calculation assumes that Penn Power pays in full Verizon's outstanding invoice for 2019 rent.

Exhibit C

Before the
Federal Communications Commission
Washington, DC 20554

VERIZON PENNSYLVANIA LLC and VERIZON NORTH LLC, Complainants, v. METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, and PENNSYLVANIA POWER COMPANY, Defendants.	)	Docket No. File No.

AFFIDAVIT OF TIMOTHY J. TARDIFF, PH.D.

COMMONWEALTH OF MASSACHUSETTS)
) ss.
COUNTY OF SUFFOLK)

I, TIMOTHY J. TARDIFF, being sworn, depose and say:

I. Introduction

1. My name is Timothy J. Tardiff. My business address is 112 Water Street, Boston, MA 02109. I am a Principal at Advanced Analytical Consulting Group, Inc. I have specialized in telecommunications policy issues for over 35 years. I received a B.S. degree from the California Institute of Technology in mathematics (with honors) in 1971 and a Ph.D. in Social Science from the University of California, Irvine in 1974. My research has included the theoretical and applied aspects of methodologies used to establish regulated rates for, among other things, pole attachments and services identified in the Telecommunications Act of 1996; studies of the demand for telephone services, such as local measured service and toll; analysis of the market potential for new telecommunications products and services; assessment of the growing competition for telecommunications services; and evaluation of regulatory frameworks consistent with the growing competitive trends. I have published

articles in the regulatory economics literature, which in recent years have focused on policies for the increasingly competitive telecommunications industry.

2. I have participated in numerous legal and regulatory proceedings on issues of telecommunications economics and regulation. Since the passage of the Telecommunications Act of 1996, I have performed analyses, filed declarations and testimony, and/or appeared as a witness in pole attachment disputes, interconnection arbitrations, unbundled network element proceedings, universal service investigations, applications by incumbent local exchange carriers for authorization to provide interLATA long-distance, and implementation of the Triennial Review Order rules for unbundling network elements in over 25 states and before the Federal Communications Commission ("FCC"). Most recently, I have participated in regulatory and legal proceedings related to broadband competition issues. In particular, I have advised telecommunications clients, filed economic analyses, and written articles on topics such as (1) rates for the use of network infrastructure such as utility poles to facilitate the efficient provision of broadband services, (2) rates for the exchange of traffic between landline carriers that avoid uneconomic arbitrage opportunities and encourage efficient investment in telecommunications networks, and (3) development of an analytical framework for determining whether incumbents' high capacity (e.g., special access and broadband Internet access) services face enough competition to justify relaxed regulation or effective deregulation.

3. Between 2013 and 2016, I filed affidavits in support of pole attachment complaints filed by Verizon Florida LLC against Florida Power and Light Company (File No. EB-15-MD-006, Docket No. 15-190) and by Verizon Virginia LLC and Verizon South Inc. against Virginia Electric and Power Company d/b/a Dominion Virginia Power (File No. EB-15-MD-002, Docket No. 15-73), as well as in support of pole attachment complaints filed by subsidiaries of Frontier Communications Corporation against subsidiaries of Duke Energy Corporation (File Nos. EB-13-MD-007, EB-14-MD-001, and EB-14-MD-002, Docket Nos. 14-213, 14-214, 14-215), UGI Utilities, Inc.—Electric Division (File No. EB-14-MD-007, Docket No. 14-217), and subsidiaries of FirstEnergy Corporation (File No. EB-14-MD-008, Docket No. 14-218). I am also filing an affidavit today in support of a related pole attachment complaint filed by Verizon Maryland LLC against the Maryland subsidiary of the FirstEnergy Corporation: Potomac Edison Company.

4. My international research and consulting experience includes studies and expert reports on telecommunication competition and interconnection issues in Canada, Japan, New Zealand, Peru, Thailand, Australia, the Commonwealth of the Northern Mariana Islands, and Trinidad and Tobago. I attach a copy of my full resume as Exhibit T-1.

5. The purpose of this affidavit is to detail my conclusion that the pole attachment rental rates that Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), and Pennsylvania Power Company ("Penn Power") (collectively, "FirstEnergy") have charged and continue to charge Verizon Pennsylvania and Verizon North (collectively, "Verizon") are unjust and unreasonable. I also explain my conclusion that a proper application of the FCC's new telecom formula produces the just and reasonable and competitively neutral rate for Verizon's attachments to FirstEnergy's joint use poles consistent with the FCC's 2011 and 2018 Orders.[1] I enumerate flaws with FirstEnergy's unsupported and unfounded assertion that Verizon enjoys net material benefits over its competitors that would justify a departure from the new telecom rate.[2]

6. In particular, the net pole attachment rental charges that FirstEnergy invoiced and Verizon paid under the current agreements for 2018 [redacted] were more than [redacted] percent as large as net payments produced by the just and reasonable rates that result from proper application of the FCC's new telecom rate formulas ($1.29 million). FirstEnergy's substantial overcharge was not unique to the 2018 rental year, as FirstEnergy overcharged Verizon by over [redacted], on average, each year from the 2011 effective date of the FCC's 2011 Order and Verizon's request for just and reasonable rates in early 2012 through the 2018 rental year, which is the most recent rental year invoiced by all three FirstEnergy companies.[3] FirstEnergy's imposition and continued charging of these rental rates in spite of the FCC's Orders reflects FirstEnergy's exercise of the superior bargaining power it

[1] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*; *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket Nos. 17-84 and 17-79, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 ("2018 Order"); *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245; GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, ¶ 217 ("2011 Report and Order").

[2] *See* Email from David J. Karafa to Brian Trosper, June 7, 2018.

[3] *See* Affidavit of M. Calnon ¶¶ 28-29.

possesses as a result of its owning about 73 percent of the joint use poles in the service territories at issue in this matter.

II. Economic Background

7. The FCC's 2018 Order updated the Commission's approach to ensuring that incumbent local exchange carriers ("ILECs") are charged just and reasonable rates for use of poles owned by investor-owned electric utilities. The Commission explained that the policy it adopted in 2011 that "similarly situated attachers should pay similar pole attachment rates for comparable access" had not achieved its intended goal because "electric utilities continue to charge [ILECs] pole attachment rates significantly higher than the rates charged to similarly situated telecommunications providers."[4]

8. In its 2011 Report and Order, the Commission sought to enforce the right of ILECs to just and reasonable rates by providing guidance and establishing reference points for evaluating the rates charged to ILECs. Under the approach adopted in 2011, the FCC stated that if the terms and conditions in a new joint use agreement are materially comparable to corresponding terms and conditions in a third-party license agreement, the just and reasonable rate would be the same as the cable rate or new telecom rate that applies to the comparable cable or telecommunications provider.[5] If the terms and conditions of the new joint use agreement instead materially advantage the ILEC (*relative to third party attachers*), the pre-existing (or old) telecom rate served as an upper bound reference point for the just and reasonable rate.[6] For existing joint use agreements, the Commission would also consider whether the rates were negotiated by parties with relatively equal bargaining power (with relative pole ownership being a key indicator) and whether the ILEC generally lacked the ability to terminate the rates and achieve new, just and reasonable rates through negotiations. In applying this framework to an existing joint use agreement that the electric utility claimed

[4] 2018 Order, ¶ 123.

[5] 2011 Report and Order, ¶ 217.

[6] For areas that are urbanized within the Commission's rules, which I understand includes the service areas of each FirstEnergy defendant, the FCC intended the pre-existing telecom rate to be approximately 50 percent higher than the new telecom rate. In particular, for urbanized areas, the new telecom rate formula includes a 0.66 cost allocator that leads to a new telecom rate that is 0.66 times the pre-existing telecom rate. 47 C.F.R. § 1.1406(d)(2). Therefore, the pre-existing telecom rate is (1/0.66 = 1.52) x the new telecom rate.

had terms that were competitively advantageous to the ILEC, the Enforcement Bureau requested a quantification of the net monetary value of those terms before it would set the just and reasonable and competitively neutral rate to be charged the ILEC.[7]

9. The Commission anticipated that electric utilities would negotiate just and reasonable rates using the guidance provided by the 2011 Report and Order. Instead, the Commission received evidence that electric utilities had failed to do so.[8] As a result, in the 2018 Order, the Commission (1) established the new telecom rate as the presumptive just and reasonable rate for "new and newly renewed" agreements, unless the electric utility can establish by clear and convincing evidence that the agreement provides net material advantages to the ILEC relative to third party attachers, and (2) determined that, if the electric utility can meet this standard, the pre-existing telecom rate is a hard cap on the rate that may be charged the ILEC, instead of a reference point.[9] Accordingly, proper calculation of the new and pre-existing (old) telecom rates is of great importance as the new telecom rate presumptively applies and the electric utility cannot lawfully charge more than the pre-existing telecom rate for new and newly renewed agreements.[10]

[7] *Verizon Florida LLC, Complainant v. Florida Power and Light Company, Respondent*, Docket No. 14-216, File No. EB-14-MD-003, Memorandum Opinion and Order, 30 FCC Rcd 1140, ¶¶ 23 and 26.

[8] 2018 Order, ¶ 123 and note 459.

[9] 2018 Order, ¶¶ 126-129.

[10] 2018 Order, ¶ 127. Note 475 defines "new or newly renewed" agreement as "one entered into, renewed, or in evergreen status after the effective date of this Order, and renewal includes agreements that are automatically renewed, extended, or placed in evergreen status." This definition appropriately captures agreements that predate the 2018 Order because, as an economic matter, there is little if any distinction between a disputed rate in a newly executed agreement and the insistence by an electric utility that an ILEC continue to pay disputed rates under an existing agreement that has been in effect for a number of years. Under a principle of competitive neutrality, evaluation of the reasonableness or unreasonableness of the rate does not change based on the age of the terms and conditions to which it is attached, but on whether those terms and conditions provide an advantage relative to those in actual license agreements between the electric utility and the ILEC's competitors. Had the FCC excluded existing agreements from the standard set forth in the 2018 Order (or the 2011 Report and Order), it would have created improper incentives for an electric utility with superior bargaining power, as it would be advantaged by refusing to agree to a new agreement, and by otherwise inhibiting, complicating, and/or lengthening the duration of the negotiation process. This, in turn, would perpetuate outdated agreements and rate disparities, in contravention of the Commission's stated objective.

III. Calculating Just and Reasonable Rates

10. Under the 2018 Order, the threshold question is whether the electric utility charges an ILEC a rate higher than the presumptively reasonable new telecom rate. The FCC's new telecom rate formula boils down to the following common-sense propositions: (1) determine how much it costs a pole owner to provide space on its poles for itself and other attaching entities each year and (2) assign a portion of that total cost to each attaching entity. The FCC designed the new telecom formula so that, with default inputs, it produces a pole attachment rate for a telecommunications provider that recovers virtually the same percentage (7.4 percent) of the annual pole cost that the cable rate recovers.[11]

A. Annual Pole Costs

11. The total annual pole costs included in the new telecom rate calculation are analogous to the costs that an office building owner would need to charge individual tenants—including itself if the owner occupied space in the building—so that the total rent (including the building owner's rent) would recover the annual investment in the building (*e.g.*, cover the owner's cost of investing in the purchase and improvement of the building)[12] plus any associated annual "out-of-pocket" operating and maintenance costs.[13] To achieve this result, the annual pole costs included in the new telecom rate calculation: (1) calculate the net investment per pole for the pole owner's stock of poles and (2) multiply the net investment per pole by an

[11] Specifically, annual pole cost is defined in 47 C.F.R. § 1.1406(d) as the net cost of a bare pole times the carrying charge rate times a cost allocator designed to rationalize rates across geographic areas. The cost allocator produces a rate virtually the same as the cable rate, which with default inputs equals 7.4 percent of the net cost of a bare pole times the carrying charge rate.

[12] In this stylized example, the cost of investing in the purchase and improvement of a building is analogous to the recovery of depreciation and cost of capital in a regulated rate.

[13] The FCC's carrying charge rate is the sum of five specific components: (1) administrative, (2) maintenance, (3) depreciation, (4) taxes, and (5) rate of return. *Implementation of Section 703(e) of the Telecommunications Act of 1996*, CS Docket No. 97-98; CS Docket No. 97-151, Consolidated Order on Reconsideration, 16 FCC Rcd 12103 (2001), Appendices E-1 and E-2 ("Reconsideration Order"), available at https://www.fcc.gov/edocs/search-results?t=quick&dockets=97-98. The first two components are analogous to "out-of-pocket" expenses and the last three recover the owner's investment in pole facilities.

annual charge factor (carrying charge factor).[14] A cost allocator is then applied based on the average number of attaching entities on the pole owner's poles.[15]

12. The FCC has identified the calculations and inputs needed to calculate net investment per pole, the annual charge factor, and the cost allocator.[16] Most of the specific inputs are directly available from FERC Form 1 accounts for calculating rates for use of poles owned by electric utilities and ARMIS accounts for calculating rates for use of poles owned by ILECs. In addition, three categories of inputs for electric utilities require reasonable allocations from accounts that include assets other than utility poles. These are (1) accumulated depreciation for poles, which requires an allocation of an accumulated depreciation account that includes all distribution facilities, of which distribution poles are one of nine specific categories, (2) deferred taxes, which are reported for all electric facilities in the FERC 1 data, and (3) maintenance expense, for which distribution poles are one of three categories for which maintenance of overhead lines is reported.

13. I reviewed the new telecom rate calculations that Verizon performed for poles owned by FirstEnergy,[17] and they reasonably assign the amounts in the broader categories as follows:

Accumulated Depreciation. The proportion of the accumulated depreciation for distribution assigned to poles equals the ratio of gross investment (plant in service) for poles to the gross investment for distribution facilities. Both gross investment amounts are available in FERC Form 1.

[14] There are two possible cases where only "out-of-pocket" costs would be included in calculating new telecom rates. First, when maintenance costs exceed a certain percentage of total annual pole costs (*e.g.*, 66 percent in urbanized areas and 44 percent in non-urbanized areas), the new telecom rate is based only on administrative and maintenance expenses. *See* 47 C.F.R. § 1.1406(d)(ii). Second, in a 2017 Order, the FCC amended its rules to exclude capital costs in calculating pole attachment rates if they are otherwise recovered in non-recurring charges, such as make-ready fees. *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 36 FCC Rcd 11128, ¶¶ 7-8. The Order added the following language to the end of 47 C.F.R. § 1.1406(b): "The Commission shall exclude from actual capital costs those reimbursements received by the utility from cable operators and telecommunications carriers for non-recurring costs."

[15] 47 C.F.R. § 1.1406(d)(2)(i).

[16] Reconsideration Order, Appendices E-1 and E-2 and 47 C.F.R. § 1.1406(d)(2)(i).

[17] Affidavit of M. Calnon, Exhibits C-1 to C-3.

Deferred Taxes. The proportion of the deferred taxes for all electric facilities assigned to poles equals the ratio of gross investment minus accumulated depreciation (from the previous step) for poles to gross investment for electric facilities minus the corresponding accumulated depreciation for all electric facilities. The gross investment and accumulated depreciation amounts for electric facilities are available in FERC Form 1.[18]

Maintenance Expense. The proportion of overhead line maintenance expenses assigned to poles equals the ratio of net investment for poles to net investment for overhead lines, where net investment equals gross investment minus accumulated depreciation minus deferred taxes. The gross investment amounts for overhead lines are available in FERC Form 1. For the accumulated depreciation amounts for overhead lines, the proportion of the distribution accumulated depreciation assigned to overhead lines equals the ratio of gross investment for overhead lines (Accounts 364, 365, and 369) to the gross investment for distribution facilities. Both gross investment amounts are available in FERC Form 1. The amount of the deferred taxes assigned to overhead line accounts equals the ratio of gross investment minus accumulated depreciation for overhead lines to gross investment for electric facilities minus the corresponding accumulated depreciation for all electric facilities.

Rate of Return and Other Inputs. In addition to the allocations of broader accounts, application of the FCC formulas also require (1) the count of distribution poles owned by the electric utility, which is not reported in FERC Form 1 data, but which is typically available from the electric utility and (2) the rate of return. The proper rate of return is the weighted cost of debt and equity, which has traditionally been based on the most recent rate of return authorized by a state regulatory body.[19] When such information is publicly available and recent, its use in rate calculations is generally uncontroversial and economically sound. However, in certain cases, publicly available authorized rates of

[18] The assignment of total deferred tax amounts based on net investment is equivalent to how states that do not include deferred taxes in the rate base, e.g., Florida, adjust the rate of return. In particular, the rate of return in such states is reduced by the ratio of what the rate base would have been had the deferred tax reserve been included to the rate base without the deferred tax reserve.

[19] *Amendment of Rules and Policies Governing Pole Attachments*, CS Docket No. 97-98, Report and Order, 15 FCC Rcd 6453, ¶ 74 (2000).

return may have been established at a time when the costs of debt and/or equity—the components of the rate of return—depart from their actual economic costs at a later date. For example, I understand [redacted] Penn Power used a 1988 rate of return of 11.14.[20] But between 1988 and a 2016 proceeding that resulted in a settlement, Penn Power reported its cost of debt had decreased from 10.15 percent to 5.88 percent and Penn Power decreased the cost of equity it requested from 14.75 percent to 11.50 percent.[21] If the 1988 rate of return were updated with Penn Power's more current costs of debt and equity (and no other components were changed), the adjusted rate of return would be 7.86 percent.[22] This result is very close to the average of the rate of return of 8.70 percent that Penn Power requested in the 2016 proceeding[23] and Commission Staff's recommended rate of return of 7.07 percent in the 2016 proceeding[24]—an average rate of return of 7.89 percent. This illustration shows that Verizon's use of the outdated 11.14 percent rate of return to calculate pole attachment rates for Verizon's use of Penn Power's poles based on 2010 to 2013 FERC data (2011 to 2014 rate years) was conservative, and that Verizon's reliance on publicly available information to calculate a rate of return of 8.01 percent to calculate pole attachment rates based on 2014 and 2015 FERC data and a rate of return of 7.72 percent to calculate pole attachment rates based on 2016 and 2017 FERC data is reasonable.

[20] Pennsylvania Public Utility Commission, Opinion and Order in Case No. R-87073, May 3, 1988, p. 65.

[21] Direct Testimony of Rachel Maurer (Commission Staff), Case Nos. R-2016-2537349, R-2016-2537352, R-2016-2537355, R-2016-2537359, pp. 6-7 and 1988 Pennsylvania Opinion and Order in Case No. R-87073, p. 58.

[22] In the 1988 Pennsylvania Opinion and Order, debt was 48.4 percent and common equity 37.4 percent of the capital structure. Therefore, a 4.27 percentage point reduction in the cost of debt (from 10.15 percent to 5.88 percent) and a 3.25 percentage point reduction in the cost of equity (from 14.75 percent to 11.5 percent) would lower the rate of return by 4.27 percentage points x 0.484 + 3.5 percentage points x 0.374, which equals 3.28 percentage points.

[23] Direct Testimony of Rachel Maurer (Commission Staff), Case Nos. R-2016-2537349, R-2016-2537352, R-2016-2537355, R-2016-2537359, pp. 6-7.

[24] Surrebuttal Testimony of Rachel Maurer (Commission Staff), Case Nos. R-2016-2537349, R-2016-2537352, R-2016-2537355, R-2016-2537359, p. 2.

B. Share of Annual Pole Costs Charged to Attaching Entities (Space Factor)

14. The FCC's new telecom rate formula assigns annual pole costs as follows:[25]

$$Space\ Factor = \frac{Space\ Occupied\ + \frac{2}{3}\frac{Unusable\ Space}{Average\ Number\ of\ Attachers}}{Pole\ Height}.$$

Accordingly, the inputs needed to calculate the space factor are (1) the average amount of space occupied by an attacher, (2) the average height of the utility poles, (3) the average amount of total space that cannot be used for attachments (unusable space), and (4) the average number of entities (including the pole owner) attached to the poles. The FCC's rules include presumptions for these inputs, which are: (1) one foot occupied by a telecommunications attacher, (2) 37.5-foot average pole height, (3) 24 feet of unusable space, and (4) five attaching entities if any part of the utility's service area in the state is urbanized. Using these presumptions, the space factor is 0.1120, or 11.2 percent.[26] Verizon correctly used this value when calculating new telecom rates for use of FirstEnergy's poles.

IV. FirstEnergy's Unjust and Unreasonable Rates

15. Describing the unreasonableness of the rates that FirstEnergy has charged and collected from Verizon is complicated by the fact that there are three rate provisions (and 10 joint use agreements) that FirstEnergy has relied upon to collect large annual net rental payments from Verizon for use of poles in Met-Ed's, Penelec's, and Penn Power's service areas. Nonetheless, the "big picture" is summarized in the table below, which shows the parties' disparate pole ownership numbers and their impact on the rental rates paid by Verizon. In particular, the table includes:

(1) the disparate pole ownership shares of each of the parties at the operating company level as well as overall. First Energy's pole ownership percentage ranges from a low of 66.7 percent (Penelec) to a high of 81.2 percent (Met-Ed) for an overall average of 73.1 percent. That is, FirstEnergy owns about three times the number of joint use poles as does Verizon.

[25] 47 C.F.R. § 1.1406(d)(2)(i).

[26] Reconsideration Order, ¶¶ 47-48.

(2) the net annual rental payment Verizon made to FirstEnergy, which totaled [redacted] for the 2018 rental year.

(3) the "net payment per net pole" that Verizon's net rental payments to FirstEnergy reflect for the 2018 rental year. I calculated this "net payment per net pole" by dividing Verizon's net rental payment by the number of FirstEnergy poles used by Verizon less the number of Verizon poles used by FirstEnergy. I performed this calculation in order to provide a basis for comparing rental rates across the FirstEnergy companies, which have different rate formulas. In particular, for the 2018 rental year (1) Met-Ed charged Verizon [redacted] for each pole reflecting the difference between 45 percent of total poles[27] and the 18.8 percent of total poles owned by Verizon, with no corresponding rate for Met-Ed's use of Verizon's poles; (2) Penelec charged Verizon [redacted] per pole for use of Penelec's poles, but paid a lower [redacted] per pole rate for use of Verizon's poles even though Penelec occupies far more space than Verizon on joint use poles;[28] and (3) Penn Power charged Verizon per pole rates that are disproportionately high relative to the rates it paid for use of far more space on Verizon's poles.[29]

[27] See, for example, Verizon Pennsylvania Inc. and FirstEnergy – Met-Ed, Memorandum of Understanding for Agreements # 11011 and 11002, June 1, 2009, Item I. for the formula for net payment, based on the difference between Verizon's actual share of joint use poles and 45 percent of total joint use poles.

[28] For example, a 1988 agreement between Penelec and Continental Telephone Company assigns 8 2/3 feet of space to Penelec (not including the safety space) and 3 feet to Verizon, even though Verizon does not require that amount of space. *See* Affidavit of S. Mills ¶ 64. Therefore, Verizon pays about [redacted] times as much per foot of assigned space as Penelec pays [redacted]). As the Enforcement Bureau's Order in the dispute between Verizon and Dominion Virginia Power observed, this type of discrepancy is an indication of the electric utility's superior bargaining power and the unreasonableness of the rates charged Verizon. *Verizon Virginia, LLC and Verizon South, Inc., Complainant v. Virginia Electric and Power Company d/b/a Dominion Virginia Power, Respondent*, Proceeding No. 15-190, Bureau ID No. EB-15-MD-006, Order, 30 FCC Rcd 1140, ¶ 13 ("Dominion Order") The ratio of Verizon's per-foot rate to First Energy's would be even higher than [redacted] if the safety space, which the FCC has a number of times explained is usable space that electric utilities in fact use, was added to FirstEnergy's assigned space. *See* for example, *Amendments of Rules and Policies Governing Pole Attachments*, CS Docket No. 97-98, Report and Order, 15 FCC Rcd 6453, ¶¶ 20-22 (2000), which is a 2000 Report and Order that confirms the safety space determination made in FCC orders from the 1970s.

[29] For 2018, Verizon paid [redacted] per pole per year to attach to Penn Power's poles, while Penn Power paid [redacted] per pole per year for attaching to Verizon's poles. While the "net payment per net pole" calculation provides a common framework for comparing payments that result from disparate rates levels and structures, the calculation understates the unreasonableness of the rates that FirstEnergy charges Verizon because it treats FirstEnergy's use of Verizon's poles as equivalent to Verizon providing an in-kind payment for the same number of poles. FirstEnergy, however, uses far more space on a joint use pole than Verizon uses and the Commission anticipated that electric

(4) the percentage of annual pole cost accounted for by Verizon's net payments, based on the annual pole costs from Verizon's proposed rate calculations.[30]

16. Table 1 presents the results of the calculations described above, with each column presenting the net payments Verizon made to each FirstEnergy operating company. While there is some variation across the three operating companies, the overall results are as follows: (1) 2018 rates produced net payments from Verizon to FirstEnergy [redacted] that are more than [redacted] times as high as net payments produced by just and reasonable and proportional new telecom rates; (2) FirstEnergy's annual overcharges have resulted from FirstEnergy's exercise of the superior bargaining power it has due to its ownership of about three joint use poles for every one joint use pole owned by Verizon, and (3) FirstEnergy has collected from Verizon a substantially larger percentage of FirstEnergy's pole cost ([redacted] percent)[31] than is covered by the rates charged Verizon's competitors (7.4 percent)—a result that violates the Commission's competitive neutrality principle.

utilities would pay a proportional rate given their greater space requirements. 2011 Report and Order ¶ 218 and note 662.

[30] Affidavit of M. Calnon, Exhibits C-1 to C-3. In Table 1, annual pole cost equals the net cost of a bare pole times the carrying charge rate.

[31] This [redacted] percent is the percentage of pole cost that Verizon pays for each pole in excess of the ones it pays for in-kind (i.e., by having FirstEnergy attachments on Verizon joint-use poles).

Table 1: 2018 Net Payments from Verizon to FirstEnergy

	I. 2018 Rates				
	Met-Ed	Penelec	Penn Power	Potomac	**FirstEnergy**
VZ on FE poles	129,421	146,859	25,574	79,434	301,854
FE on VZ poles	30,027	73,400	7,416	21,654	110,843
Total Joint Use Poles	159,448	220,259	32,990	101,088	412,697
FirstEnergy Ownership	81.2%	66.7%	77.5%	78.6%	73.1%
Net Payment	[redacted]				
Per Net Pole					
Pole Cost					
VZ cost share					
	II. New Telecom Rates (based on 2017 FERC and ARMIS Costs)				
	Met-Ed	Penelec	Penn Power	Potomac	**FirstEnergy**
VZ on FE Rate	$12.20	$10.49	$11.18	$6.07	
FE on VZ Rate	$19.11	$19.11	$19.11	$16.91	
Net Payment	$1,005,120	$137,877	$144,198	$115,995	$1,287,195

17. As described in the previous paragraph, FirstEnergy's 2018 net rental charges were more than [redacted] as large as the net payments produced by the just and reasonable rates that result from proper application of the FCC's new telecom rate formulas. Table 1 further shows that FirstEnergy has overcharged Verizon at the operating company level as well,[32] indicating exercise of superior bargaining power from owning at least two-thirds of joint use poles in each service territory.

18. For example, the top of Table 1 shows that Met-Ed charged Verizon a 2018 net rental amount of [redacted],[33] or [redacted] per net pole,[34] when Met-Ed's annual pole cost was [redacted]. Therefore, Met-Ed recovered from Verizon about [redacted] percent of Met-Ed's annual pole cost for 2018, which is about [redacted] times the 7.4 percent share of annual pole cost

[32] For example, Met Ed's 2018 net rental charges [redacted]) were almost [redacted] as large as the net payments produced by the just and reasonable rates that result from proper application of the FCC's new telecom rate formulas ($1 million).

[33] [redacted].

[34] Net poles are the difference between FirstEnergy's joint use poles and Verizon's joint use poles, which equals 99,394, producing a per net pole amount of [redacted]

included in the FCC's new telecom and cable pole attachment rates.[35] In contrast, the bottom part of the table shows that the new telecom rates that Verizon calculated ($12.20 per pole for Verizon's attachments to Met-Ed poles and $19.11 per pole for Met-Ed's attachments to Verizon's poles) would produce net payments of $1 million,[36] *i.e.*, Verizon's 2018 net payment to Met-Ed exceeded the net payment that just and reasonable rates produce by [redacted], which reflects the exercise of FirstEnergy's superior bargaining power from owning 81.2 percent of the joint use poles in the common territory that it shares with Verizon.

19. Table 1 shows that Penelec and Penn Power[37] have substantially overcharged Verizon as well. For example, the [redacted] percent of annual pole costs paid by Verizon to Penelec is [redacted] times the levels recovered by the FCC's new telecom and cable formulas.[38] The new telecom rates calculated by Verizon would reduce its 2018 net payment from [redacted] to about $138 thousand.

20. In summary, Table 1 illustrates that similar to the FCC's concerns in its Dominion Order, (1) FirstEnergy's pole ownership share of about 73 percent—which is larger than Dominion's ownership share of 65 percent[39]—is a source of FirstEnergy's

[35] With the FCC's default inputs, these rates are 7.4 percent of annual pole costs.

[36] The net payment of $1,005,120 equals the number of FirstEnergy poles with Verizon attachments (129,421) x the corresponding rate ($12.20 per pole) minus the number of Verizon poles with FirstEnergy attachments (30,027) x the corresponding rate ($19.11 per pole).

[37] Verizon informs me that the parties have charged each other for 2019 for attaching to each other's joint use poles in the Penn Power service territory, resulting in a net payment of [redacted]. Affidavit of M. Calnon ¶ 28. This amount exceeds the net payment of $166,475 produced by properly calculated proportional just and reasonable rates ($11.80 for Verizon's attachments on Penn Power poles and $18.28 for Penn Power's attachments on Verizon's poles) by [redacted]. Verizon has informed me that its FCC Reports 43-01, which provide inputs for the calculation of maximum rates Verizon can charge to other parties attaching to its poles, are based on generally accepted accounting principles (GAAP). Its FCC Reports 43-01 for previous years had been based on Part 32 Uniform System of Accounts (USOA) accounting. Accordingly, as specified in a 2017 FCC order, Verizon's proposed rates include an Implementation Rate Difference (IRD), which is subtracted from the rate that would be calculated by applying the FCC's pole attachment rate formulas to FCC Report 43-01 inputs based on GAAP accounting. The IRD is the difference in rates obtained by applying the pole attachment rate formulas to FCC Report 43-01 inputs based on GAAP and USOA accounting, respectively, for the last year in which an ILEC filed Forms 43-01 based on USOA accounting (the reports for 2017 for Verizon). 47 C.F.R. § 1.1406(e); *Comprehensive Review of the Part 32 Uniform Systems of Accounts*, WC Docket No. 14-130; *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 32 FCC Rcd 1735, ¶ 36.

[38] This [redacted] percent ratio of net payment per pole to pole cost is the percentage of pole cost that Verizon pays for each pole in excess of the ones it pays for in-kind (i.e., by having FirstEnergy attachments on Verizon joint-use poles).

[39] Dominion Order, ¶ 5.

enjoying superior bargaining power. Further, despite the fact that Verizon should have paid about $1.29 million in net 2018 pole attachment rent at properly calculated proportional just and reasonable rates, FirstEnergy argues that Verizon's net annual payment of [redacted] is "just and reasonable" and "entitled to deference by the FCC"—even though it is [redacted] higher than the net payment produced by proportional just and reasonable rates.[40]

V. Comparative Advantages and Disadvantages in Agreement Terms

21. Under the 2018 Order, a rental rate higher than the new telecom rate for a "new or newly renewed" agreement requires clear and convincing evidence from the electric utility of net material benefits that advantage Verizon relative to the third-party attachers with which Verizon competes. Absent such evidence, the FCC's long standing objective that pole attachment rates provide competitive neutrality would be undermined. FirstEnergy has not provided the required evidence. Instead, FirstEnergy has provided only a list of alleged advantages, with no attempt to quantify how much higher than the new telecom rate (if at all) a rate charged to Verizon would need to be to offset the purported advantages.[41] Importantly, FirstEnergy has also not accounted for the significant costs that Verizon bears that its competitors do not.

22. The 2018 Order observed that "In the interest of promoting infrastructure deployment, the Commission adopted a policy in 2011 that similarly situated attachers should pay similar pole attachment rates for comparable access."[42] The FCC's shifting of the burden of demonstrating and quantifying the value of alleged advantages to the electric provider and the establishment of a hard cap when such advantages have been demonstrated was

[40] *See* Email from Stephen F. Schafer to James Slavin, May 11, 2018 and Email from David J. Karafa to Brian Trosper, June 7, 2018. Lowering the rates that Verizon pays to the hard cap of the pre-existing telecom rate (approximately 50 percent higher than the new telecom rates Verizon calculated for use of FirstEnergy's poles) and assigning FirstEnergy proportional pre-existing telecom rates for its use of Verizon's poles would produce a net 2018 pole attachment rental payment of $1.95 million, [redacted] lower than the [redacted] that FirstEnergy collected from Verizon.

[41] Mr. Mills' affidavit describes how the items offered by FirstEnergy either provide no advantages relative to third party attachers and/or are offset by reciprocal benefits that FirstEnergy receives from Verizon under the joint use agreements.

[42] 2018 Order, ¶ 123.

motivated by the fact that the competitive neutrality objective established and explained in detail in the 2011 Report and Order has not been realized in practice.

23. The competitive neutrality objective articulated in the FCC's 2011 Report and Order was intended to create rate parity for all broadband providers by (1) revising the new telecom rate formula so that it produces a rate that approximates the rate resulting from the cable rate formula, (2) recognizing the statutory right of ILECs to just and reasonable rates, terms, and conditions to poles owned by investor-owned utilities, and (3) adopting a principle of competitive neutrality to define the rates that are just and reasonable for ILEC pole attachments. For example, in introducing the new telecom rate formula, the FCC observed that:[43]

> [T]he new formula will minimize the difference in rental rates paid for attachments that are used to provide voice, data, and video services, and thus will help remove market distortions that affect attachers' deployment decisions. Removing these barriers to telecommunications and cable deployment will enable consumers to benefit through increased competition, affordability, and availability of advanced communications services, including broadband. Increasing competitive neutrality also improves the ability of different providers to compete with each other on an equal footing, better enabling efficient competition.

24. Competitive neutrality was also the economic rationale for specifying that just and reasonable rates for new agreements between electric utilities and ILECs be at parity with third-party rates when other terms and conditions are comparable:[44]

> Where incumbent LECs are attaching to other utilities' poles on terms and conditions that are comparable to those that apply to a telecommunications carrier or a cable operator—which generally will be paying a rate equal or similar to the cable rate under our rules—competitive neutrality counsels in favor of affording incumbent LECs the same rate as the comparable provider (whether the telecommunications carrier or the cable operator).

[43] 2011 Report and Order, ¶ 126.

[44] 2011 Report and Order, ¶ 217.

25. Similarly, to the extent that the terms and conditions of a joint use agreement are on a net basis materially advantageous to the ILEC relative to its competitors, the FCC noted that: "Just as considerations of competitive neutrality counsel in favor of similar treatment of similarly situated providers, so too should differently situated providers be treated differently."[45]

26. The principle of competitive neutrality is particularly important in the context of pole attachments and broadband deployment. In the most general case, the principle of competitive neutrality (which is synonymous with competitive parity) amounts to the following proposition: when a particular input is essential (in this case pole attachments) for competition among providers of a downstream service (in this case broadband), then the prices charged for the essential input should neither favor nor disfavor particular providers of the downstream service (including the owner of the essential input if it competes for the downstream service).[46]

27. A competitively neutral outcome is readily apparent when there are no net material differences between the terms and conditions of a pole attachment license agreement and a joint use agreement—namely, the same rental rate should be charged. When a provider does not enjoy a net material benefit as compared to its competitors, the total cost of providing broadband for each competitor is the sum of its cost of providing broadband on the facilities in its network plus the rental rates charged by the utility. Since the latter cost (the rental rate) must be the same under the FCC's competitive neutrality principle, competition among broadband providers would be based on comparative network costs.

[45] 2011 Report and Order, ¶ 218.

[46] Kahn and Taylor describe the principal of competitive parity as follows:

> [T]he purpose and effect of [the principles of competitive parity] are to ensure that the competition between the… supplier of the essential input and its actual or potential rivals is efficient. That is to say, rules framed in accordance with those principles should produce a distribution of responsibility for performing the contested function among the several rivals on the basis of their respective costs so as to minimize the total cost of supplying the contested service.

Kahn, A.E. and Taylor, W.E., "The Pricing of Inputs Sold to Competitors: A Comment," *Yale Journal on Regulation*, Volume 11, 1994, p. 227.

28. In the event that an electric utility claims that a higher rate is justified because an ILEC enjoys net material benefits under a joint use agreement as compared to its competitors, there are several specific considerations in evaluating whether the alleged advantages justify charging the ILEC higher rental rates than third party attachers. A mere listing of purported advantages, with no quantification of how the advantages should flow to an annual rate differential, and ignoring the unique and substantial costs imposed on an ILEC, falls far short of "clear and convincing evidence" necessary to establish a net material advantage.[47]

    - *First*, since possible relative advantages would be incorporated as a difference in the annual joint use and third party rental rates, the proper measure of cost is the total *annually recurring* cost advantage divided by the number of ILEC attachments. In this regard, statements of putative total cost advantages over some unspecified duration are meaningless. In particular, many of the putative advantages asserted by FirstEnergy in this matter and by electric utilities in general have been one-time charges and/or costs associated with new attachments, e.g., engineering, application, inspection fees, and any necessary make-ready work. To the extent that any of these provided a relative advantage to Verizon (which is not apparent), the one-time cost would need to be converted into an *annually recurring* value that is divided by the number of poles on which Verizon pays the rental rate to determine how much value the advantage has relative to an annually recurring rental rate. Because the proffered one-time costs are themselves generally quite low, the annually recurring per-pole value associated with such alleged benefit can be vanishingly small.[48]

    - *Second*, some of the terms that FirstEnergy alleges to be competitively advantageous are actually reciprocal provisions that are offset by comparable benefits that Verizon (but not its competitors) provides to FirstEnergy. For example, in enumerating terms such as bonds, insurance, and indemnity provision,[49] FirstEnergy appears to have

[47] For example, in response to Verizon's request "to monetize" any net material advantage, FirstEnergy provided a list of alleged "competitive advantages" and stated only that it was "willing to discuss" them. *See* Email from David J. Karafa to Brian Trosper, June 7, 2018.

[48] Affidavit of M. Calnon ¶ 34.

[49] Email from David J. Karafa to Brian Trosper, June 7, 2018.

ignored the fact that Verizon has paid "in-kind" by providing mutual terms to FirstEnergy.

- *Third*, for work for which FirstEnergy may charge a third party, Verizon is not competitively advantaged if it incurs the cost to perform that work itself. In this regard, the FCC's Dominion Order observed: "Where Verizon performs a particular service itself and incurs costs comparable to its competitors in performing that service, we agree with Verizon that Dominion may not 'embed in Verizon's rental rate costs the Dominion does not incur."[50]

- *Fourth*, some differences in agreement terms may have no (or even negative) value. For example, FirstEnergy lists the amount of space designated as communications space (but not reserved for Verizon's exclusive use) in the joint use agreements as a benefit. The space designations established decades ago are not a benefit now, if they ever were. Verizon has explained that it uses the same types of facilities as its competitors today, and thus a comparable amount of space.[51] Further, not only does Verizon not need the amounts of space indicated in the agreements, but Verizon's competitors also attach in the space designated for Verizon.[52] Insisting on terms that perpetuate outdated space allocations (and/or a cost-allocation formula that assumes occupancy of the unneeded space) is equivalent to a landlord requiring that a tenant pay for more space than it requires and then pocketing additional rents from another tenant occupying the unneeded space.

- *Fifth*, there can be minuses associated with differences in agreement terms that offset any alleged plus. For example, FirstEnergy claims that Verizon's occupying the lowest portion of the communications space provides an easy access advantage.[53] If true (and it is not apparent that it is given the close proximity of communications attachments), offsetting any such advantage is the greater danger that Verizon's

[50] Dominion Order, ¶ 23.

[51] Affidavit of S. Mills ¶ 64.

[52] *Ibid*.

[53] Email from David J. Karafa to Brian Trosper, June 7, 2018.

attachments are damaged, e.g., by oversized vehicles.[54] When (as Mr. Mills describes) the minuses are greater than any plus, the alleged advantage is a net disadvantage.

- *Sixth*, a difference in contractual "evergreen" provisions reflects a difference in statutory rights enjoyed by ILECs and third parties that is a competitive disadvantage for ILECs. In particular, since 1996, third party attachers (but not ILECs) have had a statutory right to access. As the FCC has previously explained, voluntary access is a unique *disadvantage* that an ILEC faces in deploying and upgrading its network. After the Commission implemented the statutory right of access for third parties specified in the 1996 Telecommunications Act, an electric utility tried to substantially increase rates to cable companies that had previously attached pursuant to voluntarily-entered agreements on the grounds that statutorily guaranteed access was more valuable than voluntarily granted access. The FCC rejected the attempt, but only because it found that such an increase would be an exercise of monopoly power over an essential facility.[55]

  In light of the statutory right of access, evergreen provisions (which specify that existing attachments can remain on joint use poles at the rates in effect at the termination of an agreement)[56] would have little to no value to third parties, since they already have a right to be on poles. With respect to ILECs such as Verizon, evergreen provisions have been used to perpetuate the imbalance in rental payments and are an important contributor to Verizon's inability to terminate existing rental rate provisions and secure new just and reasonable rates.

- *Finally*, ILECs and third parties have attached to electric utility poles for decades. Accordingly, hypothetical costs that the electric utility would incur in providing attachments to ILECs and third parties, relative to what it would incur if only its attachments were on its poles are completely irrelevant to determining competitive

[54] Affidavit of S. Mills ¶¶ 66-68.

[55] *Alabama Cable Telecomms. Assocs. v. Alabama Power Co.*, 16 FCC Rcd 12209, ¶¶ 1 and 55 (2001).

[56] Email from David J. Karafa to Brian Trosper, June 7, 2018.

parity. A rate would favor the ILEC only if the net (real world) costs incurred in providing pole attachments to ILECs were less than the costs for providing attachments to third parties.[57] FirstEnergy's listing and cursory discussion of allegedly advantageous terms and conditions does not establish that Verizon would receive any competitive advantage (much less a net material advantage) were it to pay the same new telecom rate as its competitors.

[57] For example, Florida Power and Light's June 29, 2015 Response to Verizon's Complaint, (Proceeding 15-73, p. iii), Alabama Power's Answer to AT&T's June 21, 2019 Complaint (Proceeding 19-119, p. 1), and Florida Power and Light's Brief in Support of its Answer to AT&T's September 16, 2019 Complaint (Proceeding 19-187, p. 25) claim that its poles are taller than they otherwise would be to accommodate joint use, resulting in the ILEC paying lower make-ready costs. When third parties attach to these joint use poles, they also benefit to a similar extent. Further, because third parties have also been attaching to poles for more than a half century, electric utilities have installed taller poles to accommodate third-party attachments, even when there are no ILEC attachments. Indeed, Florida's investor-owned utilities in a 2008 filing in the FCC's pole attachment proceeding clearly explained that their networks are designed to accommodate third party attachments: "Third party attachment standards…do not exist in a vacuum. They are part in parcel of an electric utility's overhead distribution construction standards." (Initial Comments of Florida Power and Light, Tampa Electric and Progress Energy Florida Regarding Safety and Reliability in WC Docket No. 07-245, March 7, 2008, p. 6.) In other words, electric utilities design their networks to accommodate other parties'—both ILECs and third parties'—attachments; therefore, costs that would prevail in a hypothetical world where no other parties used FirstEnergy's poles are of no economic relevance.

By: _____
Timothy J. Tardiff
Dated: November19, 2019

Sworn to before me this 19th day of November, 2019.

_____
Notary Public BESLIDHJE SHAW

Exhibit T-1

Exhibit T-1

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Professional Summary

Dr. Timothy J. Tardiff has more than 30 years of academic and consulting experience. He has participated in numerous legal and regulatory proceedings regarding telecommunications, economics, intellectual property antitrust, and regulation issues. His research consulting, and expert witness experience in telecommunications has addressed pricing and costing issues involving increasingly competitive services, such as wireless and traditional wireline services. This experience has also included extensive examination and economic evaluation of all facets of the costing methodologies used to establish prices in rate-regulated industries—including expert reports and testimonies in a U.S. Department of Transportation proceeding on the reasonableness from an economic perspective of the rates international carriers at Los Angeles International Airport pay for use of terminal space. His work has included the telecommunications, software, transportation, energy, and public utility industries, and he has published extensively in economics, telecommunications, and transportation journals.

Dr. Tardiff is an economic consultant with clients in the telecommunications and regulated utilities industries. From 2006 to 2009, he was a Managing Director at Huron Consulting Group. Prior to joining Huron, Dr. Tardiff served as a vice president in the telecommunication practice at NERA Economic Consulting. During his career, he has served as the director of Marketing Research and senior member of the transportation practice at Charles River Associates, Inc. and assistant professor in the Department of Civil Engineering and Division of Environmental Studies at the University of California, Davis.

Dr. Tardiff's research has addressed the demand, cost, and competitive aspects of converging technologies, including wireless and broadband. He has evaluated pricing policies for increasingly competitive telecommunications markets, including appropriate mechanisms for pricing access services to competitors and studied actual and potential competition for services provided by incumbent telephone operating companies. Most recently, he has analyzed the effects of convergence and growing intermodal competition on whether incumbent firms should be considered dominant in the provision of certain services and the regulatory and antitrust implication of such determinations.

Since the passage of the United States Telecommunications Act, Dr. Tardiff has participated in interconnection arbitrations, unbundled element proceedings, universal service investigation, applications by incumbent local exchange carriers for authorization to provide interLATA long-distance, and implementation of the Triennial Review Order rules for unbundling network elements in over 25 states and before the United States Federal Communications Commission. His international research and consulting experience includes studies and expert reports on telecommunication competition issues in Canada, Japan, New Zealand, Peru, Australia, and Trinidad and Tobago, where he was an economic expert in an interconnection arbitration between two wireless carriers.

Education

- Ph.D., Social Sciences, University of California, Irvine, CA
- B.S., Mathematics, California Institute of Technology, Pasadena, CA

Testimony experience

- Reply Witness Statement of Dr. Timothy J. Tardiff on international interconnection rates, prepared for filing with the Telecommunications Authority of Trinidad and Tobago on behalf of Telecommunications Services of Trinidad and Tobago Limited, Reference Nos: 4/07/07/5 and 4/07/06/6, April 17, 2019.
- Witness Statement of Dr. Timothy J. Tardiff on international interconnection rates, prepared for filing with the Telecommunications Authority of Trinidad and Tobago on behalf of Telecommunications Services of Trinidad and Tobago Limited, Reference Nos: 4/07/07/5 and 4/07/06/6, February 25, 2019.
- Reply Comments of Timothy J. Tardiff on broadband deployment and availability, prepared for filing with the Federal Communications, Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, WC Docket No. 18-238, October 1, 2018.
- Reply Comments of Timothy J. Tardiff on broadband deployment and availability, prepared for filing with the Federal Communications, Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, WC Docket No. 17-199, October 6, 2017.
- Comments of Timothy J. Tardiff on trends in the availability of competitive broadband alternatives, prepared for filing with the Federal Communications, Restoring Internet Freedom, WC Docket No. 17-108, July 17, 2017.
- Deposition Testimony, Susan Mojica and Thomas Mojica, Individually and on behalf of others similarly situated v. Securus Technologies, Inc., Civil Action No. 5:14-cv-5258-TLB, U.S. District Court for the Western District of Arkansas, May 31, 2017.
- Expert Report, Susan Mojica and Thomas Mojica, Individually and on behalf of others similarly situated v. Securus Technologies, Inc., Civil Action No. 5:14-cv-5258-TLB, U.S.

District Court for the Western District of Arkansas, April 26, 2017 (Supplemental Report May 16, 2017).

- Deposition Testimony, Virginia Electric and Power Company d/b/a Dominion Virginia Power v. Verizon Virginia LLC and Verizon South Inc., Case No. CL15-3029-00, Virginia: In the Circuit Court of the County of Henrico, March 10, 2017.
- Expert Report, Walter Chruby, et al. v. Global Tel*Link Corporation, Civil Action No. 5:15-cv-05136-TLB, U.S. District Court for the Western District of Arkansas, February 16, 2016.
- Expert Rebuttal Report, Global Tel*Link Corporation ICS Litigation, Civil Action No. 5:14-cv-5275-TLB, U.S. District Court for the Western District of Arkansas, October 20, 2016.
- Expert Rebuttal Report, Susan Mojica, Individually and on behalf of others similarly situated v. Securus Technologies, Inc., Civil Action No. 5:14-cv-5258-TLB, U.S. District Court for the Western District of Arkansas, October 7, 2016.
- Deposition Testimony, Global Tel*Link Corporation ICS Litigation, Civil Action No. 5:14-cv-5275-TLB, U.S. District Court for the Western District of Arkansas, August 9, 2016.
- Deposition Testimony, Susan Mojica, Individually and on behalf of others similarly situated v. Securus Technologies, Inc., Civil Action No. 5:14-cv-5258-TLB, U.S. District Court for the Western District of Arkansas, July 12, 2016 and August 30, 2016.
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Professional associations

- Member, American Economic Association
- Associate Member, American Bar Association
- Member, Federal Communications Bar Association

Fellowships, grants and awards

- First Place, Dissertation Contest of the Transportation Science Section of the Operations Research Society of America.
- National Science Foundation (NSF) Research Initiation Grant (Engineering Division), 1976-1978.
- NSF Grant for Improving Doctoral Dissertation Research in the Social Sciences, 1973-1974.
- NSF Predoctoral Fellowship, 1972-1974.
- Public Health Service Traineeship, 1971-1972.

Exhibit 1

TABLE OF CONTENTS

Two copies of this agreement executed.

Irene S. Ayres
Assistant Secretary

THIS AGREEMENT, made this 28th day of September, 1973, by and between METROPOLITAN EDISON COMPANY, sometimes hereinafter called "Met-Ed", and THE BELL TELEPHONE COMPANY OF PENNSYLVANIA, sometimes hereinafter called "Bell", both being corporations organized, established and existing under and by virtue of the laws of the Commonwealth of Pennsylvania,

W I T N E S S E T H:

WHEREAS, it is a common desire to avoid unnecessary duplication of poles and mutually to benefit the Parties to this agreement, Met-Ed and Bell have agreed to continue and expand the joint use of poles; and

WHEREAS, the conditions determining the necessity or desirability of joint use depend upon the service requirements to be met by the Parties, including considerations of safety, economy, governmental regulations and company specifications, and each of them should be the judge of what the character of its circuits and construction should be to meet these requirements and whether or not these requirements can be properly met by the joint use of poles.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants herein contained, Met-Ed hereby grants Bell permission to make attachments to Met-Ed poles as hereinafter provided, and Bell hereby grants to Met-Ed permission to make attachments to Bell poles as hereinafter provided, in each case to the extent that the same may be lawfully given and subject to all Acts of Assembly and municipal ordinances and regulations now in force or hereinafter enacted and in each case subject nevertheless to the strict observance of each and all of the following, to wit:

ARTICLE I

DEFINITIONS

For the purpose of this Agreement, the following terms shall mean:

OWNER - Party having lawful right and authority to issue a License.

APPLICANT - Party submitting a request for a License.

APPLICATION - Written request for the issuance of a License.

ATTACHMENTS - Any and all facilities which may now or at any time hereafter be fastened to or affixed on poles by either Party in its business.

FACILITIES - Any and all wires, appliances, apparatus, fixtures, appurtenances and other items of equipment which may now or any time hereafter be attached to poles of either Party in its business.

LICENSE - Application properly submitted to and approved by Owner in writing.

LICENSEE - Party which has been granted a License by Owner to make an Attachment or Attachments to a pole or poles.

JOINT USE - Occupation of poles by facilities of both parties.

PARTY - Met-Ed or Bell.

PARTIES - Met-Ed and Bell.

ARTICLE II

SCOPE OF AGREEMENT

(A) This Agreement shall include all poles owned by either Party erected or hereafter erected when said poles are brought hereunder in accordance with the procedure hereinafter provided.

(B) Each Party reserves the right to exclude from Joint Use those poles which in Owner's judgment are necessary for its sole use.

ARTICLE III

SPECIFICATIONS

All Joint Use shall conform to the current National Electrical Safety Code as the same may be from time to time revised or amended, any Rules or Orders that may be issued by the Pennsylvania Public Utility Commission or any other body having jurisdiction. Any modification of said Code which may be agreed to by the Parties,

shall be applicable in lieu of the said National Electrical Safety Code, or revision or amendment thereof, when the minimum construction is in excess of the construction required by said Code, or revisions or amendments thereof.

ARTICLE IV

NEW CONSTRUCTION

(A) Whenever either Party requires new pole structures (either as an additional pole line or an extension of an existing pole line) where neither Party has existing pole structures and it does not desire to exclude such pole structures from Joint Use under the provisions of Article II, it shall promptly notify the other Party to that effect, showing the proposed location and character of the new poles and the character of circuits it desires to attach. Within ten (10) days after the receipt of such notification, the other Party shall express its intent in regards to such new pole structures.

(B) Ownership of new pole structures will be determined by mutual agreement. The poles to be owned and installed by Bell generally will include poles forty (40) foot and shorter in length, while the poles to be owned and installed by Met-Ed generally will include poles forty (40) foot and longer in length. The availability of manpower and equipment to meet the required completion date shall be considered in determining ownership.

(C) Each Party will be responsible for making its own Attachments.

(D) Each Party will be responsible for trimming and cutting required for its own pole construction.

(E) At the time the new poles are first placed for Joint Use, the pole Owner will provide the minimum number and size of anchor rods required for the Parties at all common guying points.

(F) Licensee shall promptly submit to Owner Applications for those new poles, when placed as aforementioned, to which it desires to make Attachments, such Applicatio to be made no later than November 20 of the year in which the Attachment is made.

(G) Owner shall issue Licenses for all such Applications made by Licensee pursuant to this Article.

ARTICLE V

ESTABLISHING JOINT USE OF EXISTING LINES

(A) Whenever either Party desires to make Attachments on any pole owned by the other Party, it shall make written request therefor, specifying the locations of the poles in question, and the character of circuits it desires to attach. Within ten (10) days after the receipt of such request the other Party shall express its intent in regards to such request. Owner may not refuse Joint Use solely because existing poles are not of adequate height for Joint Use.

(B) Pole lines presently owned and used solely by either Party, that are suitable for Joint Use, will be considered available for that purpose unless otherwise exclude from Joint Use under the provisions of Article II or other specific restrictions that prohibit Joint Use.

(C) If the present pole or poles are adequate for Joint Use without replacement or relocation, ownership shall remain unchanged.

(D) If the present pole or poles are not adequate for Joint Use, the new or replaced poles generally shall be owned by the Party requiring replacement, respacing or interspersing. Work required of the owner of the original pole shall be the leas possible to meet the essential needs of the attaching Party, consistent with the requirements of Article III hereof.

(E) When pole replacements are required, the owner of the present pole shall transfer its own facilities. As long as the new pole is in the same hole or is relocated by mutual agreement, such transfer shall be at the sole cost and expense of said owner; provided, however, in the event such transfer of facilities constitutes an unreasonable financial burden upon said owner the cost and expense of the same shall be borne as otherwise mutually agreed upon. Said owner shall remove and dispose of the old pole unless otherwise mutually agreed upon.

(F) Licensee shall promptly submit to Owner, Applications for those poles aforementioned to which it desires to make Attachments, such Applications to be made no later than November 20 of the year in which the Attachment is to be made.

(G) Owner shall issue Licenses for all such Applications made by Licensee pursuant to this Article.

ARTICLE VI

EXISTING JOINT USE ADDITIONAL REQUIREMENTS

(A) When a Joint Use pole must be replaced, due to the additional requirements of Owner, said replacement shall be made by and at the expense of Owner. Each Party shall transfer its own facilities. As long as the new pole is in the same hole or is relocated by mutual agreement, each Party shall bear the cost and expense of its own transfer; provided, however, in the event such transfer of facilities constitutes an unreasonable financial burden upon Licensee then the cost and expense of the same shall be borne as otherwise mutually agreed upon. The last Party on the pole being replaced, unless otherwise instructed, shall remove and dispose of the old pole within ninety (90) days from date of written notice to transfer facilities. In the event the last Party, in the absence of other instructions, is to remove the old pole within said ninety (90) days and fails so to do, the Party remaining on said pole shall be responsible for its safety.

(B) When a Joint Use pole must be replaced due to additional requirements of Licensee, Owner, at its expense, shall generally make such replacement and retain ownership where a pole up to and including forty (40) feet in length is required. Licensee, at its expense, shall generally make such replacements and assume ownership where a pole exceeding forty (40) feet in length is required. Exceptions as to which Party will replace poles, as aforesaid, may be made by mutual agreement of the Parties. Each party shall transfer its own facilities. As long as the new pole is in the same hole or is relocated by mutual agreement, each Party shall bear the cost and expense of its own transfer; provided, however, in the event

such transfer of facilities constitutes an unreasonable financial burden upon the other Party then the cost and expense of the same shall be borne as otherwise mutually agreed upon. The last Party on the pole being replaced, unless otherwise instructed, shall remove and dispose of the old pole within ninety (90) days from date of written notice to transfer facilities. In the event the last Party, in the absence of other instructions, is to remove the old pole within said ninety (90) days and fails so to do, the Party remaining on said pole shall be responsible for its safety.

(C) The Party desiring an interspersed pole will set and own the required pole. The other Party will attach at its own expense on the compensation basis as hereinafter provided in Article XI.

(D) The Party desiring respacing of poles will place and own the new pole structures required. Where it is determined that respacing of poles is of mutual benefit, the new pole ownerships will be mutually agreed upon. Each Party will attach at its own expense; the resulting Licensee will attach on the compensation basis as hereinafter provided in Article XI. The last Party on the pole being replaced, unless otherwise instructed, shall remove and dispose of the old pole within ninety (90) days from date of written notice to transfer facilities. In the event the last Party, in the absence of other instructions, is to remove the old pole within said ninety (90) days and fails so to do, the Party remaining on said pole shall be responsible for its safety.

ARTICLE VII

RIGHTS OF WAY

Each Party will obtain its own necessary rights of way. No guarantee of rights of way or permission from the property owners, municipalities, governmental authorities or any others is to be construed or implied by the issuance of a License.

ARTICLE VIII

MAINTENANCE OF POLES AND ATTACHMENTS

(A) Owner shall maintain Joint Use poles and anchor rods in a safe and serviceable condition and in accordance with the specifications outlined in Article III.

Deteriorated or damaged Joint Use poles and anchor rods shall be replaced or reset by Owner except in an emergency as hereinafter provided.

(B) Joint Use poles should be replaced or reset in the same hole unless special conditions require them to be in a different location. When relocation is required, it shall be done under the terms of Article VI hereof.

(C) When it is necessary to replace a Joint Use pole, Owner shall give written notice (except in cases of emergency) to Licensee as early as possible. Written acknowledgment of the notice and concurrence in the proposed pole replacement shall be made by Licensee. Additional requirements shall be provided under the terms of Article VI hereof.

(D) In cases of emergency, Licensee may replace Owner's pole. Owner shall be notified of such replacement as soon as possible. Owner shall pay Licensee actual cost of replacement of pole only. The last Party on the pole being replaced, unless otherwise instructed, shall remove and dispose of the old pole within ninety (90) days from date of written notice to transfer facilities. In the event the last Party, in the absence of other instructions, is to remove the old pole within said ninety (90) days and fails so to do, the Party remaining on said pole shall be responsible for its safety.

(E) Each Party shall maintain its plant in accordance with Article III including all trimming and cutting required. Temporary installations and repairs shall be kept to a minimum.

(F) Any Joint Use construction, subject to the provisions of this Agreement, which does not meet the specifications hereof shall be brought into conformity therewith in the most appropriate manner. All plant revised, replaced or new shall conform to the stipulations hereof.

ARTICLE IX

PROTECTION

(A) At those locations where Met-Ed has a multi-grounded neutral system with a continuous neutral either Party may establish a bond between Met-Ed's vertical

ground and Bell's aerial cable messenger. At those locations where no vertical ground wire exists on a pole a bond wire of sufficient length to reach Met-Ed's multi-grounded neutral may be installed.

(B) The Party requiring the bond at any location shall provide, or pay the other Party for, all necessary materials to be used in constructing such bond. Title to such materials shall vest in the requiring Party. Either Party may make all necessary connections at those locations where Met-Ed has an existing vertical ground as aforesaid. At those locations where no such vertical ground exists Bell shall make its connection first and shall properly and safely secure all wires, conductors and materials during the interim pending Met-Ed's connection to its facilities.

(C) All bonds which may be currently existing shall be subject to the provisions of this Agreement and the same, as well as bonding hereafter performed under the permission herein granted, shall be done and maintained in accordance with the requirements of the current edition of the National Electrical Safety Code, as the same may be from time to time amended or revised, and any currently applicable rules or orders of the Pennsylvania Public Utility Commission when the minimum requirements of such rules or orders are in excess of the standard of construction required by said code or revisions thereof.

ARTICLE X

APPORTIONMENT OF POLE OWNERSHIP

Subject to any necessary regulatory approval, each Party shall have the right to purchase from time to time from the other Party poles and anchor rods in an attempt to balance ownership of jointly used poles at 55% - Met-Ed, 45% - Bell. The consideration to be paid for such conveyances shall be the negotiated unit price representing the reasonable or equitable value of the facilities at the time when such transfer of ownership will take place. Notwithstanding anything herein

contained to the contrary, the Party requested to convey may refuse to do so for good cause.

ARTICLE XI

ATTACHMENT FEES - COMPENSATION

It is agreed by Parties that no Attachment Fee, as such will be paid by either Party to the other and in lieu thereof just compensation shall be made in accordance with the following:

(A) The agreed upon ratio of Joint Use of pole space is Met-Ed - 55% and Bell - 45%.

(B) The ratio of ownership of the total number of Joint Use poles shall be considered balanced when the ratio of pole ownership attained is 55% - Met-Ed and 45% - Bell.

(C) The Party owning less than its apportioned ratio of poles shall annually pay to the other the full agreed upon compensation for each pole it is deficient.

(D) The compensation per pole shall be the combined average of the Parties' annual carrying charge per pole of their respective forty (40) foot poles as of January of the then current calendar year; provided, however, in no event shall the compensation per pole be less than 90% of either Party's said annual carrying charge per pole.

(E) Compensation payments shall be made on the last day of December each year based upon all Licenses in effect on November 30 of such year.

(F) The effective date of each License shall be that date inserted on Application by Licensee, unless otherwise rejected by Owner pursuant to Article II.

(G) The effective date of each termination of License shall be the date that Licensee inserted on notice of termination to Owner; provided Licensee shall have previously removed its Attachments therefrom.

ARTICLE XII

PAYMENT OF TAXES

Owner shall be responsible for having all taxes and fees legally levied on Joint Use poles and facilities paid except where authorities levy taxes or fees legally on each Party in which case each shall be responsible for payment as stipulated by law.

ARTICLE XIII

LIABILITY FOR DAMAGES

(A) Whenever any liability is incurred by one or the other of the Parties hereto for injury to or loss of life of third persons or damage to their property, except such persons and property as are provided for in subparagraph "B" below, arising out of the Joint Use, removal, replacement or relocation of common poles under this Agreement, or due to the proximity of the facilities of the Parties associated with the Joint Use of common poles covered by this Agreement, the liability therefore as between the Parties hereto shall be as follows:

(1) Each Party hereto shall be liable for, and shall indemnify and defend the other Party against, all claims resulting from all injuries to or loss of life of persons or damage to property (including property of the other Party), caused solely by its negligence or solely by its failure to comply at any time with the provisions of this Agreement. Such liability shall not include claims arising out of the negligence of an independent contractor engaged by either Company. Such liability shall include, in addition to the monies paid to the claimant, all expenses incurred in connection with the investigation and settlement thereof, including outside attorney's fees, but shall not include salaries and disbursements of employees of any party hereto.

(2) In all other cases, the liability of each Party shall be that as determined by law.

(B) As between the two Parties only, and not for the benefit of any independent Contractor engaged by either Party or any third party, each of the Parties hereto assumes any loss resulting from injury or death to its employees, arising out of the Joint Use, removal, replacement or relocation of common poles under this Agreement, or arising from the proximity of the facilities of the Parties hereto; provided, however, that where an employee of either Party sues the other Party (or where such an action is brought on his behalf) for injuries (or death) arising from the negligence of the latter Party, its agents or employees, the liability of the employer of the injured (or deceased) employee shall be limited to payments made to said injured (or deceased) employee under the State Workmens' Compensation Laws.

(C) Licensee shall be liable for, and shall indemnify and defend Owner from and against any and all loss or damages resulting directly or indirectly in any manner from the failure, neglect or refusal of Licensee to secure any necessary right, permission, approval or authorization from property owners or public authorities for the erection and maintenance of its facilities on poles of Owner.

ARTICLE XIV

RIGHTS OF THIRD PARTIES

Nothing herein contained shall be construed as affecting the rights or privileges conferred or to be conferred by Owner, by contract or otherwise, on third Parties to use any poles or facilities covered by this Agreement. Such wires and apparatus not owned by either Party as may be placed on any pole under authority conferred by either Party shall, for the purpose of this Agreement, be considered the property of the Party authorizing the Attachment and subject as such to all the terms and conditions of this Agreement.

ARTICLE XV

ASSIGNMENT OF RIGHTS

Neither Party shall assign or otherwise dispose of this Agreement or its rights or interest hereunder or in any of the poles or Attachments or rights of way covered by this Agreement to any firm, corporation or individual, without the written consent of the other Party; provided, however, that nothing herein shall prevent or limit the right of either Party, nor shall such written consent be required, to make a lease or transfer of any or all its property, rights, privileges and franchises or any of them to another corporation organized for the purpose of conducting a business of the same general character as that of the lessor or transferor, or to enter into any lawful merger or consolidation, or to make a general mortgage of all its property rights, privileges and franchises, and in case of such lease, transfer, merger, consolidation or mortgage, the rights and obligations acquired under this Agreement shall pass to the lessee, assignee, merging or consolidating company or trustee under such mortgage. All liabilities hereunder shall bind the successors and assigns of the Parties.

ARTICLE XVI

REMOVAL OF ATTACHMENTS

Notwithstanding anything herein contained to the contrary, Licensee shall have the right from time to time and any time to remove all its Attachments made hereunder or any part thereof.

ARTICLE XVII

ABANDONMENT OF JOINTLY USED POLES

(A) Licensee may at any time abandon the use of a licensed Joint Use pole having first removed its Attachments (if any) therefrom. Licensee shall submit written notice of such abandonment to Owner whereupon all rights and liabilities of Licensee shall cease and determine as to such pole only excepting any liabilities or costs incurred by Licensee prior to the date of such notice.

(B) Owner may at any time abandon the use of any licensed Joint Use pole. If Owner is not obligated to remove such pole, Owner shall give Licensee thirty (30) days notice in writing to remove its Attachments or purchase such pole for an equitable sum as may be agreed upon by Parties. If Licensee elects to purchase said pole, Owner shall deliver to Licensee an appropriate instrument transferring title thereto. If Owner is obligated to remove such pole upon abandonment by it or if Licensee elects not to purchase, Licensee shall remove its facilities.

ARTICLE XVIII

DEFAULTS

(A) If Licensee shall be in default in any of its obligations stipulated herein, and such default continues for a period of sixty (60) days subsequent to written notice given by Owner, Owner may, if it so elects, permanently terminate Licensee's right to attach to poles as to which such default exists. Such termination shall not be construed as a waiver of the right to enforce any liabilities for costs incurred or to be incurred for the collection of any sums theretofore or thereafter due.

(B) If Owner shall be in default in any obligations stipulated herein, and such default continues for a period of sixty (60) days subsequent to written notice thereof given by Licensee, Owner hereby agrees to pay, in connection with such default, all costs and expenses reasonably incurred by Licensee in assuring the safety and adequacy of its service.

ARTICLE XIX

WAIVER OF TERMS OR CONDITIONS

The failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

ARTICLE XX

TERM OF AGREEMENT

The effective date of this Agreement shall be January 1, 1973, and subject to the provisions of Article XVIII herein, this Agreement may be terminated on or after the first day of January, 1974, upon sixty (60) days notice in writing to the other Party, provided that if not so terminated it shall continue in force thereafter until terminated by either Party at any time upon sixty (60) days notice in writing to the other Party as aforesaid.

ARTICLE XXI

CANCELLATION OF ATTACHMENT PERMITS AND AGREEMENTS

(A) All those certain Attachment Permits between Parties dated February 7, 1938, including all stipulations made therein shall be and the same hereby are null, void, and of no further force and effect except in respect to liabilities heretofore incurred thereunder, provided, however, that all licenses heretofore issued and now outstanding under these permits henceforth shall be continued in full force and effect, subject, nevertheless, to all the terms, provisions and conditions of this Agreement.

(B) Subject to the exclusions made in paragraph A of this Article, all Joint Use agreements not heretofore cancelled shall be and the same hereby are null, void, and of no further force or effect except in respect to liabilities heretofore incurred thereunder.

IN WITNESS WHEREOF, the Parties, for themselves and their successors and assigns, and intending to be legally bound hereby, have caused these presents to be duly executed the day and year first above written.

Attest:

Secretary

APPROVED AS TO FORM

METROPOLITAN EDISON COMPANY

By
Vice President

Attest:

Assistant Secretary

THE BELL TELEPHONE COMPANY OF PENNSYLVANIA

By
Vice President

NOTED:

DIST. DATA PROCESSING MGR.

PER

CENTRAL RECORDING UNIT

C&H 11/2/73

11-5-73

NOTED

Counsel

I.M.K. NOV 5 1973

11-8-73

A200181

The Bell Telephone Company of Pennsylvania

William P. Mathers
Executive Vice President

One Parkway
Philadelphia, Pennsylvania 19102
Phone (215) 466-9900

April 20, 1983

Mr. H. L. Robidoux, Vice President
Transmission & Distribution Engineering and Operations
Metropolitan Edison Company
Post Office, Box 542
Reading, Pennsylvania 19640

Dear Mr. Robidoux:

Referring to the Agreement for the Joint Use of Poles executed September 28, 1973 between Metropolitan Edison Company and The Bell Telephone Company of Pennsylvania, in order for both Companies to realize the economics inherent in deferring pole replacements, Bell is willing to agree to the following:

1. When mutually agreeable, additional pole height may be provided by a pole top extension in order to avoid a pole replacement that would otherwise be required under Article V, Paragraph (D), "Establishing Joint Use of Existing Lines", or under Article VI, Paragraph (B), "Existing Joint Use-Additional Requirements". Pole ownership will not change.

2. Metropolitan Edison will supply and install all pole top extensions.

3. For each pole top extension installed by Metropolitan Edison on a Bell pole, Bell will pay to Metropolitan Edison the current installation cost thereof within sixty (60) days of date of Metropolitan Edison's invoice therefor. This cost, currently $105.00 each, may be adjusted annually by Metropolitan Edison upon notice in writing in conjunction with the annual calculations of attachment fees as provided for in Article XI, "Attachment Fees Compensation". Bell will become owner of any pole top extension installed on a Bell pole.

4. Pole top extensions installed on a pole owned by Metropolitan Edison shall be at Metropolitan Edison's sole cost.

5. Each party shall make such rearrangement of its facilities, at its own cost and expense, as may be required in order to permit the use of the pole top extension.

If you are in agreement with the above terms, please indicate your acceptance in the space provided on the original and signed copy of this letter (which copy is to be retained by you). This letter will constitute a supplement to the 1973 Agreement.

Very truly yours,

The Bell Telephone Company of Pennsylvania

By: _____
Executive Vice President

ATTEST:

_____
Assistant Secretary

ACCEPTED:

ATTEST:

METROPOLITAN EDISON COMPANY

BY: _____
VICE-PRESIDENT

_____
Secretary

Assistant
AS TO
FORM

Exhibit 2

AGREEMENT

between

METROPOLITAN EDISON COMPANY

and

BETHEL & MT. AETNA TELEPHONE AND TELEGRAPH COMPANY

Covering Joint Use of Poles

(Effective January 1, 1968)

PUBLIC VERSION

INDEX

[illegible]

PUBLIC VERSION

THIS AGREEMENT, made as of January 1, 1968, by and between the Metropolitan Edison Company, a corporation of the Commonwealth of Pennsylvania, hereinafter called "Met-Ed", and

Bethel & Mt. Aetna Telephone and Telegraph Company

a corporation of the Commonwealth of Pennsylvania, hereinafter called "Telephone".

WITNESSETH:

WHEREAS, Met-Ed and Telephone desire to cooperate and establish joint use of their respective poles when and where joint use shall be of mutual advantage; and

WHEREAS, the conditions determining the necessity or desirability of joint use depend upon the service requirements to be met by both parties, including considerations of safety and economy, and each of them should be the judge of what the character of its circuits should be to meet its service requirements and as to whether or not these service requirements can be properly met by the joint use of poles.

NOW, THEREFORE, in consideration of the premises and the mutual convenants herein contained, the parties hereto, for themselves, their successors and assigns, do hereby convenant and agree as follows:

ARTICLE I

SCOPE OF AGREEMENT

(a) This agreement shall be in effect in the areas in which both of the parties render service in the Commonwealth of Pennsylvania, and shall cover all poles of each of the parties now existing or hereafter erected in the above territory when said poles are brought hereunder in accordance with the procedure hereinafter provided.

(b) Each party reserves the right to exclude from joint use:

(1) Poles which in the Owner's judgment are necessary for its own sole use; and

(2) Poles which carry, or are intended by the Owner to carry, circuits of such character that in the Owner's judgment the proper rendering of its service now or in the future makes joint use of such poles undesirable; and

(3) Poles where in the Owner's judgment joint use would not prove economical; and

(4) Poles located on private property, which under the tarrifs of either company, are required to be provided by the customer.

ARTICLE II

EXPLANATION OF TERMS

For the purpose of this agreement, the following terms shall have the following meanings:

OWNER is the party hereto holding title to and full ownership of a pole.

LICENSEE is the party hereto having the right under this agreement to use a pole belonging to the other party.

ATTACHMENTS means all wires, appliances, apparatus, fixtures, and appurtenances of every description now or hereafter used on poles by either party in its business.

RIGHT OF JOINT USE means the right to make joint use of poles subject to the payment of rental therefor, for the purpose of making attachments thereto, which right, when granted, shall not be revocable by the Owner.

A JOINT POLE means a pole which is tall enough to provide space for the respective parties as aforesaid and strong enough to meet the requirements of the specifications mentioned in Article III for the attachments ordinarily placed by both parties.

APPLICATION means a written request for the issuance of a Permit under the terms of this agreement.

PERMIT means an Application which has been accepted in writing.

ARTICLE III

SPECIFICATIONS

The joint use of the poles covered by this agreement shall at all times be in conformity with the National Electrical Safety Code, or in conformity with any modification thereof which may hereafter be agreed upon by the parties hereto. Any present or subsequent rules and/or regulations that may be issued by the Public Utility Commission of the Commonwealth of Pennsylvania shall supersede, for purposes of this agreement, the National Electrical Safety Code, or modification thereof, when the minimum construction required by such rules and/or regulations is in excess of the construction by said code or modification thereof.

ARTICLE IV

APPORTIONMENT OF POLE OWNERSHIP

The ownership of poles jointly used hereunder shall be apportioned so that Met-Ed owns 55% and Telephone owns 45% of all of such poles. The apportionment shall be accomplished by allocation of new construction and re-allocation of reconstruction of poles. Except as prescribed in Article V hereof, no poles will be transferred in title to accomplish this apportionment at the present time; however, Telephone reserves the right to reopen negotiations on this point should it so desire at some time in the future.

ARTICLE V

CONVEYANCE OF POLE INTEREST

Each Company will convey to the other all its right and interest in and to those jointly used poles in which it presently holds permanent use rights, though title is vested in the other Company. Such transfers shall be made without the payment of a consideration. Simultaneously with such transfers, the transferee will issue to the transferor permits, supplemental to the January 8, 1942 Permits, authorizing the continued joint use of such poles. Each of the existing agreements, other than the January 8, 1942 Permits, will then be terminated.

ARTICLE VI

ESTABLISHING JOINT USE OF EXISTING POLES

(a) Whenever either party desires to make attachments on any pole owned by the other party, it shall make written application therefor, specifying the locations of the poles in question, and in the case of Telephone, the maximum height at which it wished to attach or in the case of Met-Ed, the minimum height at which it wishes to attach. Within twenty (20) days after the receipt of such application, it shall be approved or disapproved by the Owner, except that if rearrangements or pole replacement are required to make the pole suitable for joint use and the Owner is otherwise willing to have the said pole so included, the Owner shall so notify the Licensee, and after the completion of such rearrangements or replacement shall within ten (10) days issue a permit to the Licensee.

(b) Whenever any jointly used pole or any pole about to be so used under the provisions of this agreement, is insufficient in height or strength for the existing attachments and for the proposed immediate additional attachments thereon, the Owner shall promptly replace such pole with a new pole of the necessary height and/or strength and shall make such other changes in the existing pole line in which such pole is included as the conditions may then

require and shall remove and retain the old pole, and Owner shall bear all of the expenses other than the Licensee expense, if any, for transferring its own facilities from the old to the new pole, except as provided for in Article VIII.

(c) Each party shall place, transfer and rearrange its own attachments, including any tree trimming or cutting incidental thereto, Owner of pole shall place any anchor guy rod required for use of both parties of sufficient size and strength to hold guys of both parties, and shall own, place, and maintain such guy rods at its sole expense. Each party shall provide, at its sole expense, such other guys as each may require for its own separate use. Each party shall at all times perform such work promptly and in such manner as not to interfere with the service of the other party.

ARTICLE VII

ESTABLISHING JOINT USE OF NEW POLES

(a) Whenever either party hereto requires new pole facilities under this agreement, either as an additional pole line, or an extension of an existing pole line, or in connection with the reconstruction of an existing pole line, and such pole facilities are not to be excluded from joint use under the provisions of Article I, it shall promptly notify the other party to that effect, showing the proposed location and character of the new poles and the character of circuits it desires to use thereon. Within a reasonable length of time after the receipt of such notification, it shall be approved or disapproved by the other party.

(b) Each party shall place its own attachments on the new joint poles, and do any tree trimming or cutting incidental thereto, and shall perform such work promptly and in such manner as not to interfere with the service of the other party. Owner of pole shall place any anchor guy rod required for use of both parties of sufficient size and strength to hold guys of both parties and shall own, place and maintain such guy rods at its sole expense. Each party shall provide at its sole expense such other guys as each may require for its own separate use. Each party shall at all times perform such work promptly and in such manner as not to interfere with the service of the other party.

(c) Owner shall provide and maintain pole suitable for joint use at its sole expense, except as provided for in Article X.

ARTICLE VIII

RIGHTS-OF-WAY

Each party will obtain its own necessary rights-of-way from the property owners, municipalities, or others.

ARTICLE IX

MAINTENANCE OF POLES AND ATTACHMENTS

(a) The Owner shall maintain its joint poles in a safe and serviceable condition and in accordance with the specifications mentioned in Article III and shall replace such of said poles as become defective.

(b) When replacing a jointly used pole carrying terminals of aerial cable, underground connections, or transformer equipment, the new pole shall be set in the same hole which the replaced pole occupied unless special conditions made it necessary to set it in a different location.

(c) Whenever it is necessary to replace or to change the location of a jointly used pole, the Owner shall before making such replacement or change in location give notice thereof in writing (except in case of emergency, when verbal notice will be given and subsequently confirmed in writing) to the Licensee, specifying in such notice the time of such proposed replacement or relocation. Licensee shall notify Owner in writing of its acceptance of the location or shall request the Owner for an alternate location which will be mutually acceptable. The Licensee shall at the time so specified transfer its attachments to the pole at the new location.

(d) Except as otherwise provided in Section (e) of this Article, each party shall at all times maintain all of its attachments, including guy wires, and any necessary tree trimming or cutting incidental thereto, in accordance with the specifications mentioned in Article III and shall keep them in safe condition and thorough repair provided, however, that neither party shall be required to rearrange any cable installed prior to the date of this agreement.

(e) Any existing joint use construction of the parties, which is subject to the provisions of this agreement and which does not conform to the requirements of Article III hereof, shall be brought into conformity therewith in the most practical and economical manner as attachments thereon are rearranged or renewed, or as the poles are relocated or renewed, provided, however, that neither party shall be required to rearrange any cable installed prior to the date of this agreement. When such existing joint use construction shall have been brought into conformity with said Article III, it shall at all times thereafter be maintained in accordance with sections (a) and (d) of this Article.

(f) The cost of maintaining poles and attachments and of bringing existing joint use construction into conformity with said specifications shall be borne by the parties hereto in the manner provided in Articles VI, VII, and X.

ARTICLE X

BILLING OF COSTS

(a) In cases where the construction of a new pole line or the extension of an existing pole line is contemplated by either party and there

is a possibility that the poles might be used jointly, the Owner shall so advise the other party and make inquiry as to whether it desires to attach to the poles being installed. If, after the other party has declined and the Owner has installed poles suitable only for its own use, the other party, within three years from the date of the inquiry, decides that it desires to attach to the poles, then the Owner will provide poles suitable for joint use and the other party will reimburse the Owner for any non-betterment costs involved in so doing. Conversely, should the other party accept, and the Owner installs poles suitable for joint use, the other party will submit applications for attachments within one year of the completion of the installation. In the event such party fails to make application within such one-year period, it shall reimburse the Owner for any such non-betterment costs as aforesaid.

(b) Should the Owner, when requested by Licensee to replace poles with larger or different poles, find that such replacement will become an excessive operating or financial burden upon it, such Owner may request Licensee to take over the replacement thereof and, upon mutual agreement, Licensee may replace such poles with poles then suitable for joint use and shall be, and continue as, the Owner thereof under the terms of this agreement.

ARTICLE XI

RENTALS

The rental rates heretofore established effective as of January 1, 1967, shall continue and remain in effect under this agreement and shall be applied in accordance with the provisions hereinafter set forth;

(a) Where the ownership of the pole is vested in Telephone, Met-Ed will pay to Telephone for the first year or fraction thereof, and each subsequent full year, for the use of each and every pole any portion of which is occupied by, or on which the right of joint use is specifically provided at Met-Ed's request in writing for the attachments of Met-Ed, the sum of Six Dollars and Sixty Cents ($6.60) per pole.

(b) Where the ownership of the pole is vested in Met-Ed, Telephone will pay to Met-Ed for the first year or fraction thereof, and each subsequent full year, for the use of each and every pole any portion of which is occupied by, or on which the right of joint use is specifically provided at Telephone's request in writing for the attachments of Telephone, the sum of Five Dollars and Forty Cents ($5.40) per pole.

(c) The annual carrying charge of a joint use pole (presently $12.00) and apportioned as rent (45% - $5.40 Telephone and 55% - $6.60 Met-Ed) shall be reviewed for possible adjustment at least every five (5) years. Adjustment may be made upon mutual agreement in writing by the parties hereto and the rentals to be paid hereunder shall thereafter be in the adjusted amount agree upon.

(d) Rental Payments hereunder shall be payable on the last day of December each year during the continuance of this agreement for the year ending November 30 and shall be based upon a written statement to be submitted by each party hereto to the other on or before the 15th day of December, giving the number of poles on which space is occupied by or is provided for, the attachments of the other party.

(e) The effective rental date of each Permit shall be the date that such Permit was approved by the Owner as shown thereon.

ARTICLE XII

PAYMENT OF TAXES

Each party shall pay all taxes and assessments lawfully levied on its own property attached to said jointly used poles, and the taxes and the assessments which are levied on said joint poles shall be paid by the Owner thereof, except where municipal authorities levy assessments for joint occupancy in which case each party shall pay his own tax.

ARTICLE XIII

LIABILITY AND DAMAGES

Whenever any liability is incurred by either or both of the parties hereto for damages for injuries to the employees or for injury to the property of either party, or for injuries to other persons or their property, arising out of the joint use of poles under this agreement, or due to the proximity of the wires and fixtures of the parties hereto attached to the jointly used poles covered by this agreement, the liability for such damages, as between the parties hereto, shall be as follows:

(a) Each party shall be liable for all damages for such injuries to persons or property caused solely by its negligence or solely by its failure to comply at any time with the specifications herein provided for; provided that construction temporarily exempted from the application of said specifications under the provisions of Section (e) of Article IX shall not be deemed to be in violation of said specifications during the period of such exemption.

(b) Each party shall be liable for all damages for such injuries to its own employees or its own property as are caused by the negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of either party.

(c) Each party shall be liable for one-half ($\frac{1}{2}$) of all damages for such injuries to persons other than employees of either party, and for one-half ($\frac{1}{2}$) of all damages for such injuries to property not belonging to either party that are caused by the negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of either party.

(d) Where, on account of injuries of the character described in the preceding paragraphs of this Article, either party hereto shall make any payments to injured employees or to their relatives or representatives in conformity with (1) the provision of any workmen's compensation act or any act creating a liability in the employer to pay compensation for personal injury to an employee by accident arising out of and in the course of the employment, whether based on negligence on part of the employer or not, or (2) any plan for employee's disability benefits or death benefits now established or hereafter adopted by the parties hereto or either of them, such payments shall be construed to be damages within the terms of the preceding paragraphs numbered (a) and (b) and shall be paid by the parties hereto accordingly.

(e) All claims for damages arising hereunder that are asserted against or affect both parties hereto shall be dealt with by the parties hereto jointly; provided, however, that in any case under the provisions of paragraph (c) of this Article where the claimant desires to settle any such claim upon terms acceptable to one of the parties hereto but not to the other, the party to which said terms are acceptable may, at its election, pay to the other party one-half ($\frac{1}{2}$) of the expense which such settlement would involve, and thereupon said other party shall be bound to protect the party making such payment from all further liability and expense on account of such claim.

(f) In the adjustment between the parties hereto of any claim for damages arising hereunder, the liability assumed hereunder, by the parties shall include, in addition to the amounts paid to the claimant, all expenses incurred by the parties in connection therewith, which shall comprise costs, attorneys' fees, disbursements and other proper charges and expenditures.

ARTICLE XIV

EXISTING RIGHTS OF OTHER PARTIES

Nothing herein contained shall be construed as affecting the rights or privileges previously conferred by Owner, by contract or otherwise, on third parties to use any poles covered by this agreement; and Owner shall have the right to continue and extend such rights or privileges. The permission herein granted shall at all times be subject to such existing contracts and arrangements and to extensions and renewals thereof.

ARTICLE XV

ASSIGNMENT OF RIGHTS

Except as otherwise provided in the Agreement, neither party hereto shall assign or otherwise dispose of this Agreement or any of its rights or interests hereunder, or in any of the jointly used poles, or the attachments or rights-of-way covered by this Agreement, to any firm, corporation or individual, without the written consent of the other party; provided, however, that nothing herein contained shall prevent or limit the right of either

party, nor shall such written consent be required, to mortgage any or all of its property, rights, privileges, and franchises, or to enter into any lease or transfer of all of them to another corporation organized for the purpose of conducting business of the same general character as that of such party, or to enter into any merger or consolidation; and, in case of the foreclosure of such mortgage; or in case of such lease, transfer, merger of consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by, the purchaser on foreclosure, the transferee, lessee, assignee, merging, or consolidating company, as the case may be.

ARTICLE XVI

ABANDONMENT OF JOINTLY USED POLES

(a) The Licensee may at any time abandon the use of a jointly used pole by removing its attachments therefrom and by giving notice of said action to the Owner. Licensee shall not be responsible for any detriments, damages, losses, liabilities, claims, demands, suits, costs, or expenses of any kind or description arising solely from conditions or actions existing or occurring after receipt of such notice and pertaining to the presence, maintenance, operation, or removal of such pole or the facilities thereon; provided, however, that liabilities incurred prior to said notice shall not be affected thereby.

(b) The Owner may at any time abandon the use of a jointly used pole by removing its facilities therefrom and giving the Licensee thirty (30) days notice thereof, in duplicate, on a form which shall be filled in so as to tender the transfer of title to Licensee. If Licensee shall not within said thirty (30) days have notified Owner of its intention also to abandon said joint pole, all the rights and liabilities of Owner in and to said joint pole shall be vested absolutely in Licensee, and Licensee shall thereafter save Owner harmless from all detriments, damages, losses, liabilities, claims, demands, suits, costs and expenses of every kind and description arising solely from any conditions or actions existing or occurring after the expiration of such notice period and pertaining to the presence, maintenance, operation, ~~or~~ or removal of such pole or the facilities thereon; provided, however, that liabilities incurred prior to said expiration shall not be affected thereby. If Licensee shall have notified Owner of its intention also to abandon said pole but shall nevertheless have failed to remove its attachments therefrom within thirty (30) days from the date of its notive of intention to abandon, all the rights and liabilities of the Owner shall pass to Licensee at the end of such second thirty (30) day period as if no declaration of intent had ever been made by Licensee. If Licensee shall notify Owner of its intention also to abandon said joint pole and shall remove its facilities therefrom within the time set forth herein, all the rights and liabilities of the Owner to said pole shall remain as theretofore.

(c) If Licensee elects to continue to use said jointly used pole after Owner has removed its facilities therefrom, Licensee shall pay to Owner such equitable sum for said pole as may be agreed upon by the parties, but failure to agree upon the amount of said payment shall not in any way affect the time of the change in the rights and liabilities of the parties to said pole.

ARTICLE XVII

DEFAULTS

If either party shall make default in any of its obligations under this contract and such default continues sixty (60) days after notice thereof in writing from the other party, the other party hereunder may, at its option, forthwith terminate this agreement as far as concerns future granting of joint use, or may remove, at the expense of the defaulting party, the attachments as to which such default exists, or both. Such removal or termination shall not be construed as a waiver of the right to enforce collection of any sums already due.

ARTICLE XVIII

WAIVER OF TERMS OR CONDITIONS

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

ARTICLE XIX

TERM OF AGREEMENT

This agreement shall be effective as of January 1, 1968, and subject to the provisions of Article XVII herein, this agreement may be terminated, so far as concerns further granting of Joint Use by either party, on or after the first day of January, 1969, upon sixty (60) days notice in writing to the other party, provided that if not so terminated it shall continue in force thereafter until terminated by either party at any time upon sixty (60) days notice in writing to the other party as aforesaid, and provided further that notwithstanding such termination this agreement shall remain in full force and effect with respect to all poles jointly used by the parties at the time of such termination.

ARTICLE XX

GUIDE TO PRACTICE

To establish uniform practices and procedures applying to the joint use of poles under the terms of this agreement, it is understood that both parties to this agreement will collaborate in preparing a "Guide to Practice" manual which will interpret the terms of the agreement and working practices to be followed and will prescribe the forms to be used. It is understood that no terms or conditions of this agreement will be altered by the Guide to Practice and, furthermore, that any interpretations resulting from this Guide to Practice may be changed at any time by mutual consent.

ARTICLE XXI

CANCELLATION OF PREVIOUS AGREEMENTS

The following pole attachment permits and agreements shall be and the same hereby are cancelled and terminated:

1. Attachment Permits No. ME-BMA-1 and ME-BMA-2 dated January 8, 1942 from Metropolitan Edison Company to Bethel & Mt. Aetna Telephone and Telegraph Company.

2. Attachment Permits No. BMA-ME-1 and BMA-ME-2 dated January 8, 1942 from Bethel & Mt. Aetna Telephone and Telegraph Company to Metropolitan Edison Company.

3. Any and all other pole attachment permits, licenses or agreements by and between the parties hereto, or their respective predecessors in interest, not hereinabove set forth.

ARTICLE XXII

TRANSFER OF OUTSTANDING PERMITS

All pole permits heretofore issued and now outstanding under any and all agreements cancelled by Article XXI hereof shall be deemed to have been reissued pursuant to this agreement and shall be and remain subject to all of the terms, provisions and conditions hereof.

****

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate, and their corporate seals to be affixed thereto by their respective officers thereunto duly authorized, on the 22nd day of July, 1968.

METROPOLITAN EDISON COMPANY

APPROVED AS TO FORM

By _____
Vice President

Attest:

_____
Secretary

BETHEL & MT. AETNA TELEPHONE AND TELEGRAPH COMPANY

By _____
President

Attest:

_____
Secretary

Revised FEB 1980

GUIDE TO PRACTICE

In Connection With General Joint Use Agreement Between

Metropolitan Edison Company

and

Bethel & Mt. Aetna
Telephone and Telegraph Company

Dated: July 22, 1968
Effective: January 1, 1968

To establish uniform practices and procedures applying to joint use of poles under the terms of the General Joint Use Agreement, effective January 1, 1968, between the Metropolitan Edison Company (Met-Ed) and the Bethel & Mt. Aetna Telephone and Telegraph (Telephone), the following interpretation of the terms of the Agreement and working practices is herein set forth. It is understood that nothing herein contained shall alter or cancel any part or parts of this Agreement and, furthermore, that these interpretations may be changed at any time by mutual consent upon request of either party. Only those parts of the agreement needing interpretation are included herein; for all parts not included, refer to General Joint Use Agreement.

I INTERPRETATION OF AGREEMENT

ARTICLE XVI ABANDONMENT OF JOINTLY USED POLES

An equitable sum as stated in this Article shall be the depreciated value of a pole which is high enough for the Licensee's requirements based on the Licensor's current pole prices.

I. GENERAL

A. JOINT FIELD REVIEW

From past experience, Joint Field Reviews of proposed construction and reconstruction of pole lines have been found indispensable in securing the proper application of provisions governing the joint use of such plant.

It is agreed that neither Company will underbuild or overbuild on separate parallel poles on the same side of the thoroughfare without having mutual consent.

B. UNAUTHORIZED ATTACHMENTS

It is agreed in order to insure the successful operation of this agreement that no unauthorized attachments on the part of either Company will be permitted. Exceptions will be made for emergency attachments; such as, services and others which cannot reasonably be covered jointly in the field before installing. Therefore, each Company will immediately initiate internal and inter-departmental routines to guarantee that the Owner is promptly notified when attachments are made.

C. NEUTRAL SPACE

The neutral space is provided for the protection of the workmen and plant of both parties. Therefore, it is important that both Companies cooperate fully in preventing attachments which encroach in this space.

D. IMPORTANT PRECAUTIONS

1. Adherence to Specifications

Past experience with joint use of poles indicates that there should be a stricter adherence to the specifications in regard to:

(a) Climbing space

(b) Position of ground wires

(c) Position of guy wires

(d) Position of insulation levels and guy insulators

(e) Congestion of drop-loops (services), especially on transformer poles

(f) Maintaining required clearances between services (drop-loops) of both Companies to and on customers' buildings.

(g) Special emphasis to separate telephone service lines from electric company ground leads

(h) Telephone service on high voltage poles

2. Grounding of Cable Messenger and Protector Grounds

(Refer to Amendment dated May 20, 1974 under Article titled "PROTECTION".)

3. Bonding and/or Grounding of Street Light Brackets

(Refer to Amendment dated May 20, 1974 under Article titled "PROTECTION".)

E. MISCELLANEOUS

1. Disposition of Poles to be Removed

In connection with the replacement or removal of a jointly used pole, where feasible, both Companies will arrange to cooperate in the transfer of facilities to the new pole so that Owner may remove the old pole without delay. It is the Owner's obligation to remove the old pole unless otherwise designated.

It is the duty of both parties to make certain that the other party's wires are neither touched nor disturbed.

2. Emergency Pole Replacement by Licensee

In emergency cases where Licensee discovers a hazardous pole condition requiring immediate attention, Licensee may proceed with the corrective work and bill owner. When time permits, the Owner's consent will first be secured. This practice is necessary in the interest of public safety.

II FORMS

A. JOINT USE FIELD NOTE FORM - EXHIBITS "A" & "B"

(Not applicable at present.)

B. "NOTICE OF ABANDONMENT AND TRANSFER OF OWNERSHIP" FORM - EXHIBIT "C"

1. In view of the possible time required by Licensee to complete studies to determine whether ownership will be accepted or whether it will likewise be abandoned, the Owner's intention will be conveyed promptly to the Licensee.

2. Upon physical removal of all of its attachments, Owner will prepare "Notice of Abandonment of Joint Poles and Transfer of Ownership" form (Exhibit C) and forward it to Licensee, who will execute same and return it to Owner within the time limit of thirty (30) days as specified in Article XV (b) of the Agreement. The effective date will be thirty (30) calendar days or less after owner executed form.

3. Six (6) copies of this form will be prepared by Owner. Two (2) will be signed by the authorized agent and the signatures will be conformed on the remaining copies. Two (2) conformed copies and the two (2) signed copies will be forwarded to Licensee who will affix signature of proper authorized agent to the two (2) signed copies and return the original to Owner.

4. Should Telephone be Owner of the abandoned pole, Met-Ed may convey to Telephone title to one of its poles of equal size and age in exchange for the abandoned pole which Telephone will convey to Met-Ed. Ages within the steps listed in III-B-2 of this Guide shall be considered equal. Each company, as Owner, will prepare forms as in #3 above to accomplish the conveyances. Forms shall be cross referenced to each other.

5. All "Notice of Abandonment of Joint Poles and Transfer of Ownership" forms shall be identified by the same numbers assigned to the Field Notes.

C. PROCEDURE OF REPORTING ATTACHMENTS

A report must be made of all attachments made or space reserved by either party to poles of the other party.

1. Licensee shall continue to make Application to Owner for permission to attach. Application shall be submitted in triplicate.

2. If Owner had no objection to attachments to be made, the Application shall be executed and thereupon become a Permit.

(Not applicable at this time.)

III PURCHASING ABANDONED POLES

When poles, abandoned by Owner, are to be purchased by Licensee, the equitable sum to be paid Owner shall be determined by the following procedure.

A. DETERMINATION OF "IN PLACE" VALUE OF POLES

The life span of all poles shall be thirty (30) years. For purposes of reflecting the condition of poles (as related to condition new), the Owner shall determine the remaining life by year in which pole was installed, if available, or if not, by inspection on the ground, with procedure as outlined below and in accordance with percentages outlined below:

1. The pole shall be inspected jointly by representatives of both companies in accordance with the standard procedure established for pole inspection by the company proposing to purchase the pole. The procedure should include:

   (a) an appraisal of the effect of the defects observed
   (b) an appraisal of the condition of the pole in relation to a new pole
   (c) an estimate of the age of the pole
   (d) the minimum size of pole required by the company proposing to purchase the pole.

2. All Kinds of Wood Poles

25 years or more remaining life	- 100%
20 thru 24 years remaining life	- 80%
15 thru 19 years remaining life	- 60%
10 thru 14 years remaining life	- 40%
6 thru 9 years remaining life	- 20%
3 thru 5 years remaining life	- 10%
Less than 3 years remaining life	- 0%

B. PRICE SCHEDULES

For the purpose of simplification, it has been agreed to use price schedules based on the average experience of both parties under the conditions existing in the territory covered by the Agreement, and to keep such schedules as current as possible, revising them not oftener than once a year. Each party shall be responsible for its own prices. Current prices are listed below.

PRICE SCHEDULES - EFFECTIVE JANUARY 1, 1980

Size	Bethel & Mt. Aetna Costs	Met-Ed Costs
25 ft.	$234.00	$406.00
30 ft.	268.00	388.00
35 ft.	314.00	444.00
40 ft.	345.00	505.00
45 ft.	412.00	562.00
50 ft.	459.00	660.00
55 ft.	510.00	759.00

C. EXAMPLE OF BILLING FOR PURCHASE OF POLE(S)

Owner proposes to abandon 35-foot pole which was installed 8 years ago. Licensee accepts ownership in accordance with Agreement.

Example:

When Licensee is Bethel & Mt. Aetna Telephone Co.

$444.00 X 80% = $355.20

Bill Bethel & Mt. Aetna Telephone Co.

Example:

When Licensee is Metropolitan Edison Company

$314.00 X 80% = $251.20

Bill Metropolitan Edison Company

Number.....

Form 93

NOTICE OF ABANDONMENT OF JOINT POLES AND TRANSFER OF OWNERSHIP

..... to .....
(Owner) (Licensee)

Under the terms of an agreement dated.....you maintain wires and appliances on pole(s) of Owner as follows:

Location Number	Pole Numbers	Pole Length	Location	Rental or Non-Rental	Present Value

Owner has removed its wires and appliances from the said pole(s). Kindly advise within thirty (30) days from this date if you desire to assume ownership thereof in accordance with and subject to the provisions of said agreement.

Licensee accepts ownership of the pole(s) designated in accordance with and subject to the provisions of said agreement dated .....

Licensee declines the within tender of title and has removed or will remove all its wires and appliances from said pole(s).

(One to be stricken out)

For and in consideration of the sum of One Dollar and other good and sufficient consideration, receipt whereof is hereby acknowledged, Owner hereby sells, transfers, assigns, and sets over to Licensee, its successors and assigns, effective

....., all of its interest in the pole(s) designated above, and for itself, its successors and assigns, covenants and agrees with Licensee, its successors and assigns, that it will warrant and defend the same against all and every person or persons whomsoever lawfully claiming the same or any part thereof, but Owner does not warrant any right in Grantee to maintain said pole(s).

.....
(Licensee)

By.....

Title.....

Date.....

.....
(Owner)

By.....

Title.....

Date.....

VZ00207

AMENDMENT

WHEREAS, METROPOLITAN EDISON COMPANY (Met-Ed) and BETHEL & MT. AETNA TELEPHONE AND TELEGRAPH COMPANY (Telephone) both being Pennsylvania corporations, entered into a certain Agreement (Agreement) dated July 22, 1968, effective January 1, 1968, providing for joint use of certain poles; and

WHEREAS, the parties hereto desire to supplement and amend the Agreement as hereinafter more fully set forth;

NOW, THEREFORE, in consideration of these presents, the parties hereto for themselves and their respective successors and assigns, hereby agree to amend and supplement the Agreement as hereinafter set forth, effective as of January 1, 1974, to wit:

1. Delete Article IV of the Agreement in its entirety and substitute therefor a new Article IV which reads as follows:

Article IV - Apportionment of Pole Ownership

The ownership of poles jointly used hereunder shall be apportioned so that Met-Ed owns 55% and Telephone owns 45% of all of such poles. In addition to the transfer of poles prescribed in Article V hereof, each party shall have the right to purchase from time to time from the other party poles and anchor rods in an attempt to balance ownership of jointly used poles. Such purchases shall be subject to any necessary regulatory approval and the consideration to be paid in connection therewith shall be the negotiated unit price representing the reasonable or equitable value of the facilities at the time when such transfer of ownership will take place. Notwithstanding anything herein contained to the contrary, the party requested to convey may refuse to do so for good cause.

2. Delete Article XI of the Agreement in its entirety and substitute therefor a new Article XI which reads as follows:

Article XI - Attachment Fees - Compensation

It is agreed by parties that no attachment fee, as such, will be paid by either party to the other and in lieu thereof just compensation shall be made in accordance with the following:

(A) The ratio of ownership of the total number of joint use poles shall be considered balanced when the ratio of pole ownership attained is 55% - Met-Ed and 45% - Telephone.
(B) The party owning less than its apportioned ratio of poles shall annually pay to the other the full agreed upon compensation for each pole it is deficient.
(C) The compensation per deficient pole in 1974 shall be $17.50, thereafter the compensation per deficient pole shall be the combined average of the parties' annual carrying charge per pole of their respective forty (40) foot poles as of January 1 of the then current calendar year; provided, however, in no event shall the compensation per deficient pole be less than the hereinafter designated percentum of either party's said annual carrying charge per pole, said percentum being as follows: 1975 - 87.5%, 1976 and thereafter - 90%.
(D) Compensation payments shall be made on the last day of December each year based upon all Permits in effect on November 30 of such year.
(E) The effective date of each Permit or of the termination of a Permit shall be the date that such Permit or termination thereof was approved by Owner as shown thereon, provided Licensee shall have previously removed its attachments therefrom.

3. Add a new Article to the Agreement identified as Article XXIII which shall read as follows:

Article XXIII - Protection

(A) At those locations where Met-Ed has a multi-grounded neutral system with a continuous neutral either party may establish a bond between Met-Ed's vertical ground and Telephone's aerial cable messenger. At those locations where no vertical ground wire exists on a pole a bond wire of sufficient length to reach Met-Ed's multi-grounded neutral may be installed.
(B) The party requiring the bond at any location shall provide, or pay the other party for, all necessary materials to be used in constructing such bond. Title to such materials shall vest in the requiring party. Either party may make all necessary connections at those locations where Met-Ed has an existing vertical ground as aforesaid. At those locations where no such vertical ground exists Telephone shall make its connection first and shall properly and safely secure all wires, conductors and materials during the interim pending Met-Ed's connection to its facilities.
(C) All bonds which may be currently existing shall be subject to the provisions of this Agreement and the same, as well as bonding hereafter performed under the permission herein granted, shall be done and maintained in accordance with the requirements of the current edition of the National Electrical Safety Code, as the same may be from time to time amended or revised, and any currently applicable rules or orders of the Pennsylvania Public Utility Commission when the minimum requirements of such rules or orders are in excess of the standard of construction required by said code or revisions thereof.

4. Amend the Index of the Agreement to the extent hereinafter set forth as follows:

(a) Revise Article XI to read "Article XI - Attachment Fees - Compensation"

(b) Add Article XXIII to read "Article XXIII - Protection"

Except as otherwise herein provided, Agreement shall in all other respects remain and continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have caused these presents to be duly executed this 20th day of May, 1974.

METROPOLITAN EDISON COMPANY

Attest:

R. B. Heist
Secretary

By J. S. Bartman
Vice President

BETHEL & MT. AETNA TELEPHONE AND TELEGRAPH COMPANY

Attest:

Thora K. Sheldon
Asst. Secretary

By J. C. Herbert
Vice President

Exhibit 3

February 5, 1968

PUBLIC VERSION

AGREEMENT

between

METROPOLITAN EDISON COMPANY

and

CONTINENTAL TELEPHONE COMPANY OF PENNSYLVANIA

Covering Joint Use of Poles

(Effective January 1, 1970)

PUBLIC VERSION

INDEX

PUBLIC VERSION

THIS AGREEMENT, made as of March 17, 1972 by and between the Metropolitan Edison Company, a corporation of the Commonwealth of Pennsylvania, hereinafter called "Met-Ed", and

Continental Telephone Company of Pennsylvania

a corporation of the Commonwealth of Pennsylvania, hereinafter called "Telephone".

WITNESSETH:

WHEREAS, Met-Ed and Telephone desire to cooperate and establish joint use of their respective poles when and where joint use shall be of mutual advantage; and

WHEREAS, the conditions determining the necessity or desirability of joint use depend upon the service requirements to be met by both parties, including considerations of safety and economy, and each of them should be the judge of what the character of its circuits should be to meet its service requirements and as to whether or not these service requirements can be properly met by the joint use of poles.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants herein contained, Met-Ed hereby grants to Telephone permission to make attachments to Met-Ed poles as hereinafter provided, and Telephone hereby grants to Met-Ed permission to make attachments to Telephone poles as hereinafter provided, in each case to the extent the same may be lawfully given and subject to all Acts of Assembly and municipal ordinances and regulations now in force or hereinafter enacted and in each case subject nevertheless to the strict observance of each and all of the following, to wit:

ARTICLE I

SCOPE OF AGREEMENT

(a) This agreement shall be in effect in the areas in which both of the parties render service in the Commonwealth of Pennsylvania, and shall cover all poles of each of the parties now existing or hereafter erected in the above territory when said poles are brought hereunder in accordance with the procedure hereinafter provided.

(b) Each party reserves the right to exclude from joint use:

(1) Poles which in the Owner's judgment are necessary for its own sole use; and

(2) Poles which carry, or are intended by the Owner to carry, circuits of such character that in the Owner's judgment the proper rendering of its service now or in the future makes joint use of such poles undesirable; and

(3) Poles where in the Owner's judgment joint use would not prove economical; and

(4) Poles located on private property, which under the tarrifs of either company, are required to be provided by the customer.

VZ00214

ARTICLE II

EXPLANATION OF TERMS

For the purpose of this agreement, the following terms shall have the following meanings:

OWNER is the party hereto holding title to and full ownership of a pole.

LICENSEE is the party hereto having the right under this agreement to use a pole belonging to the other party.

ATTACHMENTS means all wires, appliances, apparatus, fixtures, and appurtenances of every description now or hereafter used on poles by either party in its business.

RIGHT OF JOINT USE means the right to make joint use of poles subject to the payment of rental therefor, for the purpose of making attachments thereto, which right, when granted, shall not be revocable by the Owner, except as hereinafter provided.

A JOINT POLE means a pole which is tall enough to provide space for the respective parties as aforesaid and strong enough to meet the requirements of the specifications mentioned in Article III for the attachments ordinarily placed by both parties.

APPLICATION means a written request for the issuance of a Permit under the terms of this agreement.

PERMIT means an Application which has been accepted in writing.

ARTICLE III

SPECIFICATIONS

The joint use of the poles covered by this agreement shall at all times be in conformity with the National Electrical Safety Code, or in conformity with any modification thereof which may hereafter be agreed upon by the parties hereto. Any present or subsequent rules and/or regulations that may be issued by the Public Utility Commission of the Commonwealth of Pennsylvania shall supersede, for purposes of this agreement, the National Electrical Safety Code, or modification thereof, when the minimum construction required by such rules and/or regulations is in excess of the construction by said code or modification thereof.

ARTICLE IV

APPORTIONMENT OF POLE OWNERSHIP

Subject to any necessary regulatory approval, each Company, if it so desires, will convey to the other, title to certain poles and anchor rods which it shall hereafter designate, so as to achieve a balance of ownership of jointly used poles of 55% Met-Ed and 45% Telephone. The consideration to be paid for initial transfer of poles and associated anchor rods shall be the negotiated unit prices representing the reasonable or equitable value of the poles and anchor rods at the time when such transfer of ownership will take place.

Subsequent conveyances may take place to attain the balance of ownership aforementioned or to maintain said balance when it varies more than 5% from that determined above. The considerations to be paid for such conveyances shall be negotiated unit prices representing the reasonable or equitable value of the poles and anchor rods at the time when such transfer of ownership will take place.

ARTICLE V

ESTABLISHING JOINT USE OF EXISTING POLES

(a) Whenever either party desires to make attachments on any pole owned by the other party, it shall make written application therefor, specifying the locations of the poles in question, and in the case of Telephone, the maximum height at which it wishes to attach or in the case of Met-Ed, the minimum height at which it wishes to attach. Within twenty (20) days after the receipt of such application, it shall be approved or disapproved by the Owner, except that if rearrangements or pole replacement are required to make the pole suitable for joint use and the Owner is otherwise willing to have the said pole so included, the Owner shall so notify the Licensee, and after the completion of such rearrangements or replacement shall within ten (10) days issue a permit to the Licensee.

(b) Whenever any jointly used pole or any pole about to be so used under the provisions of this agreement, is insufficient in height or strength for the existing attachments and for the proposed immediate additional attachments thereon, the Owner shall promptly replace such pole with a new pole of the necessary height and/or strength and shall make such other changes in the existing pole line in which such pole is included as the conditions may then require and shall remove and retain the old pole, and Owner shall bear all of the expenses other than the Licensee expense, if any, for transferring its own facilities from the old to the new pole, except as provided for in Article IX.

(c) Each party shall place, transfer and rearrange its own attachments, including any tree trimming or cutting incidental thereto, Owner of pole shall place any anchor guy rod required for use of both parties of sufficient size and strength to hold guys of both parties, and shall own, place, and maintain such guy rods at its sole expense. Each party shall provide, at its sole expense, such other guys as each may require for its own separate use. Each party shall at all times perform such work promptly and in such manner as not to interfere with the service of the other party.

ARTICLE VI

ESTABLISHING JOINT USE OF NEW POLES

(a) Whenever either party hereto requires new pole facilities under this agreement, either as an additional pole line, or an extension of an existing pole line, or in connection with the reconstruction of an existing pole line, and such pole facilities are not to be excluded from joint use under the provisions of Article I, it shall promptly notify the other party to that effect, showing the proposed location and character of the new poles and the character of circuits it desires to use thereon. Within a reasonable length of time after the receipt of such notification, it shall be approved or disapproved by the other party.

(b) Each party shall place its own attachments on the new joint poles, and do any tree trimming or cutting incidental thereto, and shall perform such work promptly and in such manner as not to interfere with the service of the other party. Owner of pole shall place any anchor guy rod required for use of both parties of sufficient size and strength to hold guys of both parties and shall own, place and maintain such guy rods at its sole expense. Each party shall provide at its sole expense such other guys as each may require for its own separate use. Each party shall at all times perform such work promptly and in such manner as not to interfere with the service of the other party.

(c) Owner shall provide and maintain pole suitable for joint use at its sole expense, except as provided for in Article IX.

ARTICLE VII

RIGHTS-OF-WAY

Each party will obtain its own necessary rights-of-way from the property owners, municipalities, or others.

ARTICLE VIII

MAINTENANCE OF POLES AND ATTACHMENTS

(a) The Owner shall maintain its joint poles in a safe and serviceable condition and in accordance with the specifications mentioned in Article III and shall replace such of said poles as become defective.

(b) When replacing a jointly used pole carrying terminals of aerial cable, underground connections, or transformer equipment, the new pole shall be set in the same hole which the replaced pole occupied unless special conditions made it necessary to set it in a different location.

(c) Whenever it is necessary to replace or to change the location of a jointly used pole, the Owner shall before making such replacement or change in location give notice thereof in writing (except in case of emergency,

when verbal notice will be given and subsequently confirmed in writing) to the Licensee, specifying in such notice the time of such proposed replacement or relocation. Licensee shall notify Owner in writing of its acceptance of the location or shall request the Owner for an alternate location which will be mutually acceptable. The Licensee shall at the time so specified transfer its attachments to the pole at the new location.

(d) Except as otherwise provided in Section (e) of this Article, each party shall at all times maintain all of its attachments, including guy wires, and any necessary tree trimming or cutting incidental thereto, in accordance with the specifications mentioned in Article III and shall keep them in safe condition and thorough repair.

(e) Any existing joint use construction of the parties, which is subject to the provisions of this agreement and which does not conform to the requirements of Article III hereof, shall be brought into conformity therewith in the most practical and economical manner as attachments thereon are rearranged or renewed, or as the poles are relocated or renewed, provided, however, that neither party shall be required to rearrange any cable installed prior to the date of this agreement. When such existing joint use construction shall have been brought into conformity with said Article III, it shall at all times thereafter be maintained in accordance with Sections (a) and (d) of this Article.

(f) The cost of maintaining poles and attachments and of bringing existing joint use construction into conformity with said specifications shall be borne by the parties hereto in the manner provided in Articles V, VI, and IX.

ARTICLE IX

BILLING OF COSTS

(a) In cases where the construction of a new pole line or the extension of an existing pole line is contemplated by either party and there is a possibility that the poles might be used jointly, the Owner shall so advise the other party and make inquiry as to whether it desires to attach to the poles being installed. If, after the other party has declined and the Owner has installed poles suitable only for its own use, the other party, within three years from the date of the inquiry, decides that it desires to attach to the poles, then the Owner will provide poles suitable for joint use and the other party will reimburse the Owner for any non-betterment costs involved in so doing. Conversely, should the other party accept, and the Owner installs poles suitable for joint use, the other party will submit applications for attachments within one year of the completion of the installation. In the event such party fails to make application within such one-year period, it shall reimburse the Owner for any such non-betterment costs as aforesaid.

(b) Should the Owner, when requested by Licensee to replace poles with larger or different poles, find that such replacement will become an excessive operating or financial burden upon it, such Owner may request Licensee to take over the replacement thereof and, upon mutual agreement, Licensee may replace such poles with poles then suitable for joint use and shall be, and continue as, the Owner thereof under the terms of this agreement.

ARTICLE X

RENTALS

The rental rates heretofore established effective as of January 1, 19 , shall continue and remain in effect under this agreement and shall be applied in accordance with the provisions hereinafter set forth;

(a) Where the ownership of the pole is vested in Telephone, Met-Ed will pay to Telephone for the first year or fraction thereof, and each subsequent full year, for the use of each and every pole any portion of which is occupied by, or on which the right of joint use is specifically provided at Met-Ed's request in writing for the attachments of Met-Ed, the sum of Six Dollars and Sixty Cents ($6.60) per pole.

(b) Where the ownership of the pole is vested in Met-Ed, Telephone will pay to Met-Ed for the first year or fraction thereof, and each subsequent full year, for the use of each and every pole any portion of which is occupied by, or on which the right of joint use is specifically provided at Telephone's request in writing for the attachments of Telephone, the sum of Five Dollars and Forty Cents ($5.40) per pole.

(c) The annual carrying charge of a joint use pole (presently $12.00) and apportioned as rent (45% - $5.40 Telephone and 55% - $6.60 Met-Ed) shall be reviewed for possible adjustment at least every five (5) years. Adjustment may be made upon mutual agreement in writing by the parties hereto and the rentals to be paid hereunder shall thereafter be in the adjusted amount agreed upon.

(d) Rental Payments hereunder shall be payable on the last day of December each year during the continuance of this agreement for the year ending November 30 and shall be based upon a written statement to be submitted by each party hereto to the other on or before the 15th day of December, giving the number of poles on which space is occupied by or is provided for, the attachments of the other party. The first payment of rental hereunder shall be made as of the 31st day of December, 1970.

(e) The effective rental date of each Permit shall be the date that such Permit was approved by the Owner as shown thereon.

ARTICLE XI

PAYMENT OF TAXES

Each party shall pay all taxes and assessments lawfully levied on its own property attached to said jointly used poles, and the taxes and the assessments which are levied on said joint poles shall be paid by the Owner thereof, except where municipal authorities levy assessments for joint occupancy in which case each party shall pay his own tax.

ARTICLE XII

LIABILITY AND DAMAGES

Whenever any liability is incurred by either or both of the parties hereto for damages for injuries to the employees or for injury to the property of either party, or for injuries to other persons or their property, arising out of the joint use of poles under this agreement, or due to the proximity of the wires and fixtures of the parties hereto attached to the jointly used poles covered by this agreement, the liability for such damages, as between the parties hereto, shall be as follows:

(a) Each party shall be liable for all damages for such injuries to persons or property caused solely by its negligence or solely by its failure to comply at any time with the specifications herein provided for; provided that construction temporarily exempted from the application of said specifications under the provisions of Section (e) of Article VIII shall not be deemed to be in violation of said specifications during the period of such exemption.

(b) Each party shall be liable for all damages for such injuries to its own employees or its own property as are caused by the negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of either party.

(c) Each party shall be liable for one-half ($\frac{1}{2}$) of all damages for such injuries to persons other than employees of either party, and for one-half ($\frac{1}{2}$) of all damages for such injuries to property not belonging to either party that are caused by the negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of either party.

(d) Where, on account of injuries of the character described in the preceding paragraphs of this Article, either party hereto shall make any payments to injured employees or to their relatives or representatives in conformity with (1) the provision of any workmen's compensation act or any act creating a liability in the employer to pay compensation for personal injury to an employee by accident arising out of and in the course of the employment, whether based on negligence on part of the employer or not, or (2) any plan for employee's disability benefits or death benefits now established or hereafter adopted by the parties hereto or either of them, such payments shall be construed to be damages within the terms of the preceding paragraphs numbered (a) and (b) and shall be paid by the parties hereto accordingly.

(e) All claims for damages arising hereunder that are asserted against or affect both parties hereto shall be dealt with by the parties hereto jointly; provided, however, that in any case under the provisions of paragraph (c) of this Article where the claimant desires to settle any such claim upon terms acceptable to one of the parties hereto but not to the other, the party to which said terms are acceptable may, at its election, pay to the other party one-half ($\frac{1}{2}$) of the expense which such settlement would involve, and thereupon said other party shall be bound to protect the party making such payment from all further liability and expense on account of such claim.

(f) In the adjustment between the parties hereto of any claim for damages arising hereunder, the liability assumed hereunder, by the parties shall include, in addition to the amounts paid to the claimant, all expenses incurred by the parties in connection therewith, which shall comprise costs, attorneys' fees, disbursements and other proper charges and expenditures.

ARTICLE XIII

EXISTING RIGHTS OF OTHER PARTIES

Nothing herein contained shall be construed as affecting the rights or privileges previously conferred by Owner, by contract or otherwise, on third parties to use any poles covered by this agreement; and Owner shall have the right to continue and extend such rights or privileges. The permission herein granted shall at all times be subject to such existing contracts and arrangements and to extensions and renewals thereof.

ARTICLE XIV

ASSIGNMENT OF RIGHTS

Except as otherwise provided in the Agreement, neither party hereto shall assign or otherwise dispose of this Agreement or any of its rights or interests hereunder, or in any of the jointly used poles, or the attachments or rights-of-way covered by this Agreement, to any firm, corporation or individual, without the written consent of the other party; provided, however, that nothing herein contained shall prevent or limit the right of either party, nor shall such written consent be required, to mortgage any or all of its property, rights, privileges, and franchises, or to enter into any lease or transfer of all of them to another corporation organized for the purpose of conducting business of the same general character as that of such party, or to enter into any merger or consolidation; and, in case of the foreclosure of such mortgage; or in case of such lease, transfer, merger of consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by, the purchaser on foreclosure, the transferee, lessee, assignee, merging, or consolidating company, as the case may be.

ARTICLE XV

ABANDONMENT OF JOINTLY USED POLES

(a) The Licensee may at any time abandon the use of a jointly used pole by removing its attachments therefrom and by giving notice of said action to the Owner. Licensee shall not be responsible for any detriments, damages, losses, liabilities, claims, demands, suits, costs, or expenses of any kind or description arising solely from conditions or actions existing or occurring after receipt of such notice and pertaining to the presence, maintenance, operation, or removal of such pole or the facilities thereon; provided, however, that liabilities incurred prior to said notice shall not be affected thereby.

(b) The Owner may at any time abandon the use of a jointly used pole by removing its facilities therefrom and giving the Licensee thirty (30) days notice thereof, in duplicate, on a form which shall be filled in so as to tender the transfer of title to Licensee. If Licensee shall not within said thirty (30) days have notified Owner of its intention also to abandon said joint pole, all the rights and liabilities of Owner in and to said joint pole shall be vested absolutely in Licensee, and Licensee shall thereafter save Owner harmless from all detriments, damages, losses, liabilities, claims, demands, suits, costs and expenses of every kind and description arising solely from any conditions or actions existing or occurring after the expiration of such notice period and pertaining to the presence, maintenance, operation, or removal of such pole or the facilities thereon; provided, however, that liabilities incurred prior to said expiration shall not be affected thereby. If Licensee shall have notified Owner of its intention also to abandon said pole but shall nevertheless have failed to remove its attachments therefrom within thirty (30) days from the date of its notice of intention to abandon, all the rights and liabilities of the Owner shall pass to Licensee at the end of such second thirty (30) day period as if no declaration of intent had ever been made by Licensee. If Licensee shall notify Owner of its intention also to abandon said joint pole and shall remove its facilities therefrom within the time set forth herein, all the rights and liabilities of the Owner to said pole shall remain as theretofore.

(c) If Licensee elects to continue to use said jointly used pole after Owner has removed its facilities therefrom, Licensee shall pay to Owner such equitable sum for said pole as may be agreed upon by the parties, but failure to agree upon the amount of said payment shall not in any way affect the time of the change in the rights and liabilities of the parties to said pole.

ARTICLE XVI

DEFAULTS

If either party shall make default in any of its obligations under this contract and such default continues sixty (60) days after notice thereof in writing from the other party, the other party hereunder may, at its option, forthwith terminate this agreement as far as concerns future granting of joint use, or may remove, at the expense of the defaulting party, the attachments as

to which such default exists, or both. Such removal or termination shall not be construed as a waiver of the right to enforce collection of any sums already due.

ARTICLE XVII

WAIVER OF TERMS OR CONDITIONS

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

ARTICLE XVIII

TERM OF AGREEMENT

This agreement shall be effective as of January 1, 1972 except as to the first payment of rental hereunder as prescribed in Article X, Paragraph d, and subject to the provisions of Article XVI herein, this agreement may be terminated, so far as concerns further granting of Joint Use by either party, on or after the first day of January, 1973, upon sixty (60) days notice in writing to the other party, provided that if not so terminated it shall continue in force thereafter until terminated by either party at any time upon sixty (60) days notice in writing to the other party as aforesaid, and provided further that notwithstanding such termination this agreement shall remain in full force and effect with respect to all poles jointly used by the parties at the time of such termination.

ARTICLE XIX

CANCELLATION OF PREVIOUS AGREEMENTS

The following pole attachment permits and agreements shall be and the same hereby are cancelled and terminated effective as of the date hereof except as to any obligation and liability theretofore incurred thereunder:

WIRE ATTACHMENT PERMIT [illegible]-1A dated April 1, 1940 from Metropolitan Edison Company to Hershey Estates, trading and doing business as Hershey Bell Telephone, predecessor in interest to Telephone.

WIRE ATTACHMENT PERMIT [illegible]-1 dated August 15, 1940 from Hershey Estates, trading and doing business as Hershey Bell Telephone, predecessor in interest to Telephone, to Metropolitan Edison Company.

Any and all other WIRE ATTACHMENT PERMITS by and between the parties hereto, or their respective predecessors in interest, not hereinabove set forth.

ARTICLE XX

STATUS OF EXISTING ATTACHMENTS

All presently existing attachments which were being maintained by virtue of any agreement cancelled by Article XIX hereof shall be deemed henceforth to be existing pursuant to this agreement and shall be and remain subject to all of the terms, provisions and conditions hereof.

****

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate, and their corporate seals to be affixed thereto by their respective officers thereunto duly authorized, on the day and year first written herein.

METROPOLITAN EDISON COMPANY

By _____
Vice President

Attest:

_____
Secretary

APPROVED AS TO FORM

CONTINENTAL TELEPHONE COMPANY OF PENNSYLVANIA

By _____
President

Attest:

_____
Asst Secretary

PUBLIC VERSION

AMENDMENT

WHEREAS, METROPOLITAN EDISON COMPANY (Met-Ed) and CONTINENTAL TELEPHONE COMPANY OF PENNSYLVANIA (Telephone) both being Pennsylvania corporations, entered into a certain Agreement (Agreement) dated March 17, 1972, effective January 1, 1972, providing for joint use of certain poles; and

WHEREAS, the parties hereto desire to supplement and amend the Agreement as hereinafter more fully set forth;

NOW, THEREFORE, in consideration of these presents, the parties hereto for themselves and their respective successors and assigns, hereby agree to amend and supplement the Agreement as hereinafter set forth, effective as of January 1, 1974, to wit:

1. Delete Article X of the Agreement in its entirety and substitute therefor a new Article X which reads as follows:

Article X - Attachment Fees - Compensation

It is agreed by parties that no attachment fee, as such, will be paid by either party to the other and in lieu thereof just compensation shall be made in accordance with the following:

(A) The ratio of ownership of the total number of joint use poles shall be considered balanced when the ratio of pole ownership attained is 55% - Met-Ed and 45% - Telephone.
(B) The party owning less than its apportioned ratio of poles shall annually pay to the other the full agreed upon compensation for each pole it is deficient.
(C) The compensation per pole shall be the combined average of the parties' annual carrying charge per pole of their respective forty (40) foot poles as of January 1 of the then current calendar year; provided, however, in no event shall the compensation per pole be less than the hereinafter designated percentum of either party's said annual carrying charge per pole, said percentum being as follows: 1974 - 85%, 1975 - 87.5%, 1976 and thereafter - 90%.
(D) Compensation payments shall be made on the last day of December each year based upon all Permits in effect on November 30 of such year.
(E) The effective date of each Permit or of the termination of a Permit shall be the date that such Permit or termination thereof was approved by Owner as shown thereon, provided Licensee shall have previously removed its attachments therefrom.

2. Add a new Article to the Agreement identified as Article XXI which shall read as follows:

Article XXI - Protection

(A) At those locations where Met-Ed has a multi-grounded neutral system with a continuous neutral either party may establish a bond between Met-Ed

tical ground and Telephone's aerial cable messenger. At those locations where no vertical ground wire exists on a pole a bond wire of sufficient length to reach Met-Ed's multi-grounded neutral may be installed.

(B) The party requiring the bond at any location shall provide, or pay the other party for, all necessary materials to be used in constructing such bond. Title to such materials shall vest in the requiring party. Either party may make all necessary connections at those locations where Met-Ed has an existing vertical ground as aforesaid. At those locations where no such vertical ground exists Telephone shall make its connection first and shall properly and safely secure all wires, conductors and materials during the interim pending Met-Ed's connection to its facilities.

(C) All bonds which may be currently existing shall be subject to the provisions of this Agreement and the same, as well as bonding hereafter performed under the permission herein granted, shall be done and maintained in accordance with the requirements of the current edition of the National Electrical Safety Code, as the same may be from time to time amended or revised, and any currently applicable rules or orders of the Pennsylvania Public Utility Commission when the minimum requirements of such rules or orders are in excess of the standard of construction required by said code or revisions thereof.

3. Amend the Index of the Agreement to the extent hereinafter set forth as follows:

(a) Revise Article X to read "Article X - Attachment Fees - Compensation"

(b) Add Article XXI to read "Article XXI - Protection"

Except as otherwise herein provided, Agreement shall in all other respects remain and continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have caused these presents to be duly executed this 16th day of December, 1977.

METROPOLITAN EDISON COMPANY

Attest:

R J Ruth
Assistant Secretary

By _____
Vice President

CONTINENTAL TELEPHONE COMPANY OF PENNSYLVANIA

Attest:

_____

By _____
President

VZ00226

Exhibit 4

AGREEMENT

between

METROPOLITAN EDISON COMPANY

and

QUAKER STATE TELEPHONE COMPANY

Covering Joint Use of Poles

(Effective January 1, 1970)

INDEX

PUBLIC VERSION

THIS AGREEMENT, made as of JAN 8 1971 by and between the Metropolitan Edison Company, a corporation of the Commonwealth of Pennsylvania, hereinafter called "Met-Ed", and

Quaker State Telephone Company

a corporation of the Commonwealth of Pennsylvania, hereinafter called "Telephone".

WITNESSETH:

WHEREAS, Met-Ed and Telephone desire to cooperate and establish joint use of their respective poles when and where joint use shall be of mutual advantage; and

WHEREAS, the conditions determining the necessity or desirability of joint use depend upon the service requirements to be met by both parties, including considerations of safety and economy, and each of them should be the judge of what the character of its circuits should be to meet its service requirements and as to whether or not these service requirements can be properly met by the joint use of poles.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants herein contained, Met-Ed hereby grants to Telephone permission to make attachments to Met-Ed poles as hereinafter provided, and Telephone hereby grants to Met-Ed permission to make attachments to Telephone poles as hereinafter provided, in each case to the extent the same may be lawfully given and subject to all Acts of Assembly and municipal ordinances and regulations now in force or hereinafter enacted and in each case subject nevertheless to the strict observance of each and all of the following, to wit:

ARTICLE I

SCOPE OF AGREEMENT

(a) This agreement shall be in effect in the areas in which both of the parties render service in the Commonwealth of Pennsylvania, and shall cover all poles of each of the parties now existing or hereafter erected in the above territory when said poles are brought hereunder in accordance with the procedure hereinafter provided.

(b) Each party reserves the right to exclude from joint use:

(1) Poles which in the Owner's judgment are necessary for its own sole use; and

(2) Poles which carry, or are intended by the Owner to carry, circuits of such character that in the Owner's judgment the proper rendering of its service now or in the future makes joint use of such poles undesirable; and

(3) Poles where in the Owner's judgment joint use would not prove economical; and

(4) Poles located on private property, which under the tarrifs of either company, are required to be provided by the customer.

VZ00230

ARTICLE II

EXPLANATION OF TERMS

For the purpose of this agreement, the following terms shall have the following meanings:

OWNER is the party hereto holding title to and full ownership of a pole.

LICENSEE is the party hereto having the right under this agreement to use a pole belonging to the other party.

ATTACHMENTS means all wires, appliances, apparatus, fixtures, and appurtenances of every description now or hereafter used on poles by either party in its business.

RIGHT OF JOINT USE means the right to make joint use of poles subject to the payment of rental therefor, for the purpose of making attachments thereto, which right, when granted, shall not be revocable by the Owner, except as hereinafter provided.

A JOINT POLE means a pole which is tall enough to provide space for the respective parties as aforesaid and strong enough to meet the requirements of the specifications mentioned in Article III for the attachments ordinarily placed by both parties.

APPLICATION means a written request for the issuance of a Permit under the terms of this agreement.

PERMIT means an Application which has been accepted in writing.

ARTICLE III

SPECIFICATIONS

The joint use of the poles covered by this agreement shall at all times be in conformity with the National Electrical Safety Code, or in conformity with any modification thereof which may hereafter be agreed upon by the parties hereto. Any present or subsequent rules and/or regulations that may be issued by the Public Utility Commission of the Commonwealth of Pennsylvania shall supersede, for purposes of this agreement, the National Electrical Safety Code, or modification thereof, when the minimum construction required by such rules and/or regulations is in excess of the construction by said code or modification thereof.

ARTICLE IV

APPORTIONMENT OF POLE OWNERSHIP

Subject to any necessary regulatory approval, each Company, if it so desires, will convey to the other, title to certain poles and anchor rods which it shall hereafter designate, so as to achieve a balance of ownership of jointly used poles of 55% Met-Ed and 45% Telephone. The consideration to be paid for initial transfer of poles and associated anchor rods shall be the negotiated unit prices representing the reasonable or equitable value of the poles and anchor rods at the time when such transfer of ownership will take place.

Subsequent conveyances may take place to attain the balance of ownership aforementioned or to maintain said balance when it varies more than 5% from that determined above. The considerations to be paid for such conveyances shall be negotiated unit prices representing the reasonable or equitable value of the poles and anchor rods at the time when such transfer of ownership will take place.

ARTICLE V

ESTABLISHING JOINT USE OF EXISTING POLES

(a) Whenever either party desires to make attachments on any pole owned by the other party, it shall make written application therefor, specifying the locations of the poles in question, and in the case of Telephone, the maximum height at which it wishes to attach or in the case of Met-Ed, the minimum height at which it wishes to attach. Within twenty (20) days after the receipt of such application, it shall be approved or disapproved by the Owner, except that if rearrangements or pole replacement are required to make the pole suitable for joint use and the Owner is otherwise willing to have the said pole so included, the Owner shall so notify the Licensee, and after the completion of such rearrangements or replacement shall within ten (10) days issue a permit to the Licensee.

(b) Whenever any jointly used pole or any pole about to be so used under the provisions of this agreement, is insufficient in height or strength for the existing attachments and for the proposed immediate additional attachments thereon, the Owner shall promptly replace such pole with a new pole of the necessary height and/or strength and shall make such other changes in the existing pole line in which such pole is included as the conditions may then require and shall remove and retain the old pole, and Owner shall bear all of the expenses other than the Licensee expense, if any, for transferring its own facilities from the old to the new pole, except as provided for in Article IX.

(c) Each party shall place, transfer and rearrange its own attachments, including any tree trimming or cutting incidental thereto, Owner of pole shall place any anchor guy rod required for use of both parties of sufficient size and strength to hold guys of both parties, and shall own, place, and maintain such guy rods at its sole expense. Each party shall provide, at its sole expense, such other guys as each may require for its own separate use. Each party shall at all times perform such work promptly and in such manner as not to interfere with the service of the other party.

ARTICLE VI

ESTABLISHING JOINT USE OF NEW POLES

(a) Whenever either party hereto requires new pole facilities under this agreement, either as an additional pole line, or an extension of an existing pole line, or in connection with the reconstruction of an existing pole line, and such pole facilities are not to be excluded from joint use under the provisions of Article I, it shall promptly notify the other party to that effect, showing the proposed location and character of the new poles and the character of circuits it desires to use thereon. Within a reasonable length of time after the receipt of such notification, it shall be approved or disapproved by the other party.

(b) Each party shall place its own attachments on the new joint poles, and do any tree trimming or cutting incidental thereto, and shall perform such work promptly and in such manner as not to interfere with the service of the other party. Owner of pole shall place any anchor guy rod required for use of both parties of sufficient size and strength to hold guys of both parties and shall own, place and maintain such guy rods at its sole expense. Each party shall provide at its sole expense such other guys as each may require for its own separate use. Each party shall at all times perform such work promptly and in such manner as not to interfere with the service of the other party.

(c) Owner shall provide and maintain pole suitable for joint use at its sole expense, except as provided for in Article IX.

ARTICLE VII

RIGHTS-OF-WAY

Each party will obtain its own necessary rights-of-way from the property owners, municipalities, or others.

ARTICLE VIII

MAINTENANCE OF POLES AND ATTACHMENTS

(a) The Owner shall maintain its joint poles in a safe and serviceable condition and in accordance with the specifications mentioned in Article III and shall replace such of said poles as become defective.

(b) When replacing a jointly used pole carrying terminals of aerial cable, underground connections, or transformer equipment, the new pole shall be set in the same hole which the replaced pole occupied unless special conditions made it necessary to set it in a different location.

(c) Whenever it is necessary to replace or to change the location of a jointly used pole, the Owner shall before making such replacement or change in location give notice thereof in writing (except in case of emergency,

when verbal notice will be given and subsequently confirmed in writing) to the Licensee, specifying in such notice the time of such proposed replacement or relocation. Licensee shall notify Owner in writing of its acceptance of the location or shall request the Owner for an alternate location which will be mutually acceptable. The Licensee shall at the time so specified transfer its attachments to the pole at the new location.

(d) Except as otherwise provided in Section (e) of this Article, each party shall at all times maintain all of its attachments, including guy wires, and any necessary tree trimming or cutting incidental thereto, in accordance with the specifications mentioned in Article III and shall keep them in safe condition and thorough repair.

(e) Any existing joint use construction of the parties, which is subject to the provisions of this agreement and which does not conform to the requirements of Article III hereof, shall be brought into conformity therewith in the most practical and economical manner as attachments thereon are rearranged or renewed, or as the poles are relocated or renewed, provided, however, that neither party shall be required to rearrange any cable installed prior to the date of this agreement. When such existing joint use construction shall have been brought into conformity with said Article III, it shall at all times thereafter be maintained in accordance with Sections (a) and (d) of this Article.

(f) The cost of maintaining poles and attachments and of bringing existing joint use construction into conformity with said specifications shall be borne by the parties hereto in the manner provided in Articles V, VI, and IX.

ARTICLE IX

BILLING OF COSTS

(a) In cases where the construction of a new pole line or the extension of an existing pole line is contemplated by either party and there is a possibility that the poles might be used jointly, the Owner shall so advise the other party and make inquiry as to whether it desires to attach to the poles being installed. If, after the other party has declined and the Owner has installed poles suitable only for its own use, the other party, within three years from the date of the inquiry, decides that it desires to attach to the poles, then the Owner will provide poles suitable for joint use and the other party will reimburse the Owner for any non-betterment costs involved in so doing. Conversely, should the other party accept, and the Owner installs poles suitable for joint use, the other party will submit applications for attachments within one year of the completion of the installation. In the event such party fails to make application within such one-year period, it shall reimburse the Owner for any such non-betterment costs as aforesaid.

(b) Should the Owner, when requested by Licensee to replace poles with larger or different poles, find that such replacement will become an excessive operating or financial burden upon it, such Owner may request Licensee to take over the replacement thereof and, upon mutual agreement, Licensee may replace such poles with poles then suitable for joint use and shall be, and continue as, the Owner thereof under the terms of this agreement.

ARTICLE X

RENTALS

The rental rates heretofore established effective as of January 1, 1968 shall continue and remain in effect under this agreement and shall be applied in accordance with the provisions hereinafter set forth;

(a) Where the ownership of the pole is vested in Telephone, Met-Ed will pay to Telephone for the first year or fraction thereof, and each subsequent full year, for the use of each and every pole any portion of which is occupied by, or on which the right of joint use is specifically provided at Met-Ed's request in writing for the attachments of Met-Ed, the sum of Six Dollars and Sixty Cents ($6.60) per pole.

(b) Where the ownership of the pole is vested in Met-Ed, Telephone will pay to Met-Ed for the first year or fraction thereof, and each subsequent full year, for the use of each and every pole any portion of which is occupied by, or on which the right of joint use is specifically provided at Telephone's request in writing for the attachments of Telephone, the sum of Five Dollars and Forty Cents ($5.40) per pole.

(c) The annual carrying charge of a joint use pole (presently $12.00) and apportioned as rent (45% - $5.40 Telephone and 55% - $6.60 Met-Ed) shall be reviewed for possible adjustment at least every five (5) years. Adjustment may be made upon mutual agreement in writing by the parties hereto and the rentals to be paid hereunder shall thereafter be in the adjusted amount agreed upon.

(d) Rental Payments hereunder shall be payable on the last day of December each year during the continuance of this agreement for the year ending November 30 and shall be based upon a written statement to be submitted by each party hereto to the other on or before the 15th day of December, giving the number of poles on which space is occupied by or is provided for, the attachments of the other party. The first payment of rental hereunder shall be made as of the 31st day of December, 19 70.

(e) The effective rental date of each Permit shall be the date that such Permit was approved by the Owner as shown thereon.

ARTICLE XI

PAYMENT OF TAXES

Each party shall pay all taxes and assessments lawfully levied on its own property attached to said jointly used poles, and the taxes and the assessments which are levied on said joint poles shall be paid by the Owner thereof, except where municipal authorities levy assessments for joint occupancy in which case each party shall pay his own tax.

ARTICLE XII

LIABILITY AND DAMAGES

Whenever any liability is incurred by either or both of the parties hereto for damages for injuries to the employees or for injury to the property of either party, or for injuries to other persons or their property, arising out of the joint use of poles under this agreement, or due to the proximity of the wires and fixtures of the parties hereto attached to the jointly used poles covered by this agreement, the liability for such damages, as between the parties hereto, shall be as follows:

(a) Each party shall be liable for all damages for such injuries to persons or property caused solely by its negligence or solely by its failure to comply at any time with the specifications herein provided for; provided that construction temporarily exempted from the application of said specifications under the provisions of Section (e) of Article VIII shall not be deemed to be in violation of said specifications during the period of such exemption.

(b) Each party shall be liable for all damages for such injuries to its own employees or its own property as are caused by the negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of either party.

(c) Each party shall be liable for one-half ($\frac{1}{2}$) of all damages for such injuries to persons other than employees of either party, and for one-half ($\frac{1}{2}$) of all damages for such injuries to property not belonging to either party that are caused by the negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of either party.

(d) Where, on account of injuries of the character described in the preceding paragraphs of this Article, either party hereto shall make any payments to injured employees or to their relatives or representatives in conformity with (1) the provision of any workmen's compensation act or any act creating a liability in the employer to pay compensation for personal injury to an employee by accident arising out of and in the course of the employment, whether based on negligence on part of the employer or not, or (2) any plan for employee's disability benefits or death benefits now established or hereafter adopted by the parties hereto or either of them, such payments shall be construed to be damages within the terms of the preceding paragraphs numbered (a) and (b) and shall be paid by the parties hereto accordingly.

(e) All claims for damages arising hereunder that are asserted against or affect both parties hereto shall be dealt with by the parties hereto jointly; provided, however, that in any case under the provisions of paragraph (c) of this Article where the claimant desires to settle any such claim upon terms acceptable to one of the parties hereto but not to the other, the party to which said terms are acceptable may, at its election, pay to the other party one-half ($\frac{1}{2}$) of the expense which such settlement would involve, and thereupon said other party shall be bound to protect the party making such payment from all further liability and expense on account of such claim.

(f) In the adjustment between the parties hereto of any claim for damages arising hereunder, the liability assumed hereunder, by the parties shall include, in addition to the amounts paid to the claimant, all expenses incurred by the parties in connection therewith, which shall comprise costs, attorneys' fees, disbursements and other proper charges and expenditures.

ARTICLE XIII

EXISTING RIGHTS OF OTHER PARTIES

Nothing herein contained shall be construed as affecting the rights or privileges previously conferred by Owner, by contract or otherwise, on third parties to use any poles covered by this agreement; and Owner shall have the right to continue and extend such rights or privileges. The permission herein granted shall at all times be subject to such existing contracts and arrangements and to extensions and renewals thereof.

ARTICLE XIV

ASSIGNMENT OF RIGHTS

Except as otherwise provided in the Agreement, neither party hereto shall assign or otherwise dispose of this Agreement or any of its rights or interests hereunder, or in any of the jointly used poles, or the attachments or rights-of-way covered by this Agreement, to any firm, corporation or individual, without the written consent of the other party; provided, however, that nothing herein contained shall prevent or limit the right of either party, nor shall such written consent be required, to mortgage any or all of its property, rights, privileges, and franchises, or to enter into any lease or transfer of all of them to another corporation organized for the purpose of conducting business of the same general character as that of such party, or to enter into any merger or consolidation; and, in case of the foreclosure of such mortgage; or in case of such lease, transfer, merger of consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by, the purchaser on foreclosure, the transferee, lessee, assignee, merging, or consolidating company, as the case may be.

ARTICLE XV

ABANDONMENT OF JOINTLY USED POLES

(a) The Licensee may at any time abandon the use of a jointly used pole by removing its attachments therefrom and by giving notice of said action to the Owner. Licensee shall not be responsible for any detriments, damages, losses, liabilities, claims, demands, suits, costs, or expenses of any kind or description arising solely from conditions or actions existing or occurring after receipt of such notice and pertaining to the presence, maintenance, operation, or removal of such pole or the facilities thereon; provided, however, that liabilities incurred prior to said notice shall not be affected thereby.

(b) The Owner may at any time abandon the use of a jointly used pole by removing its facilities therefrom and giving the Licensee thirty (30) days notice thereof, in duplicate, on a form which shall be filled in so as to tender the transfer of title to Licensee. If Licensee shall not within said thirty (30) days have notified Owner of its intention also to abandon said joint pole, all the rights and liabilities of Owner in and to said joint pole shall be vested absolutely in Licensee, and Licensee shall thereafter save Owner harmless from all detriments, damages, losses, liabilities, claims, demands, suits, costs and expenses of every kind and description arising solely from any conditions or actions existing or occurring after the expiration of such notice period and pertaining to the presence, maintenance, operation, or removal of such pole or the facilities thereon; provided, however, that liabilities incurred prior to said expiration shall not be affected thereby. If Licensee shall have notified Owner of its intention also to abandon said pole but shall nevertheless have failed to remove its attachments therefrom within thirty (30) days from the date of its notice of intention to abandon, all the rights and liabilities of the Owner shall pass to Licensee at the end of such second thirty (30) day period as if no declaration of intent had ever been made by Licensee. If Licensee shall notify Owner of its intention also to abandon said joint pole and shall remove its facilities therefrom within the time set forth herein, all the rights and liabilities of the Owner to said pole shall remain as theretofore.

(c) If Licensee elects to continue to use said jointly used pole after Owner has removed its facilities therefrom, Licensee shall pay to Owner such equitable sum for said pole as may be agreed upon by the parties, but failure to agree upon the amount of said payment shall not in any way affect the time of the change in the rights and liabilities of the parties to said pole.

ARTICLE XVI

DEFAULTS

If either party shall make default in any of its obligations under this contract and such default continues sixty (60) days after notice thereof in writing from the other party, the other party hereunder may, at its option, forthwith terminate this agreement as far as concerns future granting of joint use, or may remove, at the expense of the defaulting party, the attachments as

to which such default exists, or both. Such removal or termination shall not be construed as a waiver of the right to enforce collection of any sums already due.

ARTICLE XVII

WAIVER OF TERMS OR CONDITIONS

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

ARTICLE XVIII

TERM OF AGREEMENT

This agreement shall be effective as of January 1, 1970, except as to the first payment of rental hereunder as prescribed in Article X, Paragraph d, and subject to the provisions of Article XVI herein, this agreement may be terminated, so far as concerns further granting of Joint Use by either party, on or after the first day of January, 1970, upon sixty (60) days notice in writing to the other party, provided that if not so terminated it shall continue in force thereafter until terminated by either party at any time upon sixty (60) days notice in writing to the other party as aforesaid, and provided further that notwithstanding such termination this agreement shall remain in full force and effect with respect to all poles jointly used by the parties at the time of such termination.

ARTICLE XIX

CANCELLATION OF PREVIOUS AGREEMENTS

The following pole attachment permits and agreements shall be and the same hereby are cancelled and terminated effective as of the date hereof except as to any obligation and liability theretofore incurred thereunder:

WIRE ATTACHMENT PERMIT [illegible]-LT-1 dated December 9, 1946 from Metropolitan Edison Company to Lycoming Telephone Company, predecessor in interest to Telephone.

WIRE ATTACHMENT PERMIT LT-[illegible]-1 dated December 9, 1946 from Lycoming Telephone Company, predecessor in interest to Telephone, to Metropolitan Edison Company.

Any and all other WIRE ATTACHMENT PERMITS by and between the parties hereto, or their respective predecessors in interest, not hereinabove set forth.

ARTICLE XX

STATUS OF EXISTING ATTACHMENTS

All presently existing attachments which were being maintained by virtue of any agreement cancelled by Article XIX hereof shall be deemed henceforth to be existing pursuant to this agreement and shall be and remain subject to all of the terms, provisions and conditions hereof.

****

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate, and their corporate seals to be affixed thereto by their respective officers thereunto duly authorized, on the day and year first written herein.

METROPOLITAN EDISON COMPANY

APPROVED AS TO FORM

By _____
Vice President

Attest:

_____
Secretary

QUAKER STATE TELEPHONE COMPANY

By _____
V.P. President

Attest:

_____
Asst. Secretary

Exhibit 5

AGREEMENT

between

METROPOLITAN EDISON COMPANY

AND

YORK TELEPHONE & TELEGRAPH COMPANY

Covering Joint Use of Poles

(Effective January 1, 1967)

AGREEMENT

between

METROPOLITAN EDISON COMPANY

and

YORK TELEPHONE & TELEGRAPH COMPANY

Covering Joint Use of Poles

(Effective January 1, 1967)

INDEX

*) SEE AMENDMENT 1-1-74

THIS AGREEMENT, made as of January 1, 1967, by and between the Metropolitan Edison Company, a corporation of the Commonwealth of Pennsylvania, hereinafter called "Met-Ed," and York Telephone & Telegraph Company, a corporation of the Commonwealth of Pennsylvania, hereinafter called "Telephone."

WITNESSETH:

WHEREAS, Met-Ed and Telephone desire to cooperate and establish joint use of their respective poles when and where joint use shall be of mutual advantage; and

WHEREAS, the conditions determining the necessity or desirability of joint use depend upon the service requirements to be met by both parties, including considerations of safety and economy, and each of them should be the judge of what the character of its circuits should be to meet its service requirements and as to whether or not these service requirements can be properly met by the joint use of poles.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

ARTICLE I

SCOPE OF AGREEMENT

(a) This agreement shall be in effect in the areas in which both of the parties render service in the Commonwealth of Pennsylvania, and shall cover all poles of each of the parties now existing or hereafter erected in the above territory when said poles are brought hereunder in accordance with the procedure hereinafter provided.

(b) Each party reserves the right to exclude from joint use:

(1) Poles which in the Owner's judgment are necessary for its own sole use; and

(2) Poles which carry, or are intended by the Owner to carry, circuits of such character that in the Owner's judgment the proper rendering of its service now or in the future makes joint use of such poles undesirable; and

(3) Poles where in the Owner's judgment joint use would not prove economical; and

(4) Poles located on private property, which under the tariffs of either company, are required to be provided by the customer.

ARTICLE II

EXPLANATION OF TERMS

For the purpose of this agreement, the following terms shall have the following meanings:

OWNER is the party hereto holding title to and full ownership of a pole.

LICENSEE is the party hereto having the right under this agreement to use a pole belonging to the other party.

ATTACHMENTS means all wires, appliances, apparatus, fixtures, and appurtenances of every description now or hereafter used on poles by either party in its business.

RIGHT OF JOINT USE means the rights to make joint use of poles subject to the payment of rental therefor, for the purpose of making attachments thereto, which right, when granted, shall not be revocable by the Owner.

A JOINT POLE means a pole which is tall enough to provide space for the respective parties as aforesaid and strong enough to meet the requirements of the specifications mentioned in Article III for the attachments ordinarily placed by both parties.

APPLICATION means a written request for the issuance of a Permit under the terms of this agreement.

PERMIT means an Application which has been accepted in writing.

ARTICLE III

SPECIFICATIONS

The joint use of the poles covered by this agreement shall at all times be in conformity with the National Electrical Safety Code, or in conformity with any modification thereof which may hereafter be agreed upon by the parties hereto. Any present or subsequent rules and/or regulations that may be issued by the Public Utility Commission of the Commonwealth of Pennsylvania shall supersede the National Electrical Safety Code, or modification thereof, when the minimum construction required by such rules and/or regulations is in excess of the construction required by said code or modification thereof.

ARTICLE IV

ESTABLISHING JOINT USE OF EXISTING POLES

(a) Whenever either party desires to make attachments on any pole owned by the other party, it shall make written application therefor, specifying the locations of the poles in question, and in the case of Telephone, the maximum